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THE

Law and Practice

RELATING TO

PROBATE & ADMINISTRATION.

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POWLES AND OAKLEY

ON THE

Law and Practice

RELATING TO

PROBATE & ADMINISTRATION.

FOURTH EDITION,

RE-ARRANGED AND IN GREAT PART RE-WRITTEN.

Part I.—THE LAW.

BY

L. D. POWLES,

BARRISTER-AT-LAW; DISTRICT PROBATE REGISTRAR, NORWICH.

Part II.—THE PRACTICE.

BY

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PREFACE TO THE FOURTH EDITION.

For many years there have been complaints of the lack of a really satisfactory book on Probate Practice—a book that would give the practitioner clear directions as to the procedure to be followed in any case, and would enable him to find quickly any point of practice he may want. The present Edition is an attempt to meet this need.

The Treatise has been entirely re-arranged and practically re-written. It is now divided into two Parts:—Part I. dealing exclusively with the Law relating to Probate,—in other words, with the Principles on which Probate matters are decided; and Part II. dealing with the Practice in such matters.

The short point of every reported decision in Probate that is still of value will be found in Part I., and it is hoped this Part will prove of great utility to practitioners, especially when they want to find a point quickly.

In Part II. it has been the aim of the Editors to present the practice, both in contentious and non-contentious business, in such a concise form

that the practitioner will easily find the point required. In effecting this object it has been found impossible to avoid a certain amount of repetition of matters also contained in Part I. This was considered the more convenient course to adopt, in order to obviate a constant reference to both Parts.

The Index has been revised, condensed, and alphabetically arranged in the sub-heads. The list of Statutes referred to in the text has been included in the Index.

Statutes referring to Probate matters are printed *in extenso* in the Appendix, together with a full collection of forms usually required in both contentious and non-contentious matters.

Mr. Frederic Upton, late Chief of the Department, has kindly written the Chapter on "Notations."

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7th September, 1906.

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THE

PRINCIPLES AND PRACTICE

OF

PROBATES AND ADMINISTRATIONS.

CHAPTER I.

OF THE CONSTITUTION OF THE COURT.

Previous to 1857.

PREVIOUS to the year 1857 the entire jurisdiction with respect to probate and administration of the personal estate and effects of deceased persons, was exercised in this country by the Ecclesiastical Courts. In the latter year the Court of Probate was created (*a*), and to it was transferred the entire testamentary jurisdiction of all ecclesiastical and other Courts in England and Wales. This tribunal was finally abolished, and at the same time resuscitated under the title of the Probate, Divorce and Admiralty Division of her Majesty's High Court of Justice by the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), but as the scope of this work is confined to the practice of this Division in probate matters, the shorter title of the "Probate Division" will generally be used.

From 1857 to 1875.

Merger of Court of Probate into Supreme Court.

By sect. 3 of this Act the Court of Probate is made part of the Supreme Court of Judicature in England, and sect. 4 divides the Supreme Court into "her Majesty's

(*a*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77).

Division of Supreme Court into High Court of Justice and Court of Appeal.

High Court of Justice" and "her Majesty's Court of Appeal."

Judge of Probate Court appointed judge of High Court.

By sect. 5, the judge of the Court of Probate is appointed one of the first judges of her Majesty's High Court of Justice, and by sect. 11 all his rights and privileges are specially retained, subject to any change effected in his jurisdiction and duties by the Act.

Saving of his rights and privileges.

Sect. 16 provides for the transfer to the High Court of Justice of the jurisdiction (amongst others) of the Court of Probate.

Transfer of jurisdiction of Court of Probate to High Court of Justice.

By sect. 23, all jurisdictions transferred by the Act to the High Court of Justice and the Court of Appeal shall, in so far as regards procedure and practice, be exercised in the manner provided by the Act, or by such rules and orders of Court as may be made pursuant to the Act.

Rules as to exercise of jurisdiction.

In the absence of any such special provision such jurisdictions shall be exercised, as nearly as may be, in the same manner as the same might have been exercised by the respective Courts previous to the passing of the Act.

Probate Division made one of the Divisions of the High Court.

Sect. 31 constitutes the Probate, Divorce and Admiralty Division one of the Divisions of the High Court of Justice.

Judge of Court of Probate to be president of Division.

Sub-sect. 5 of the same section provides that it "shall consist of two judges who, immediately on the commencement of this Act, shall be the existing judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, and the existing judge of the High Court of Admiralty;" and the judge of the Court of Probate is further appointed president of the Division.

Business to be assigned to Probate Division.

By sect. 34, all causes and matters pending in the Court of Probate at the commencement of the Act; and all causes and matters which (if the Act had not passed) would have been within the exclusive cognizance of the Court of Probate, are assigned to the Probate Division.

Probate causes to be heard in first instance

By sect. 42, all business arising out of any cause or matter assigned to the Probate Division shall (subject to any rules of Court) be transacted and disposed of, in the

first instance, by one judge only, "as has been heretofore accustomed in the Court of Probate." before one judge only.

By sect. 44, Divisional Courts may be held for the transaction of any part of the business assigned to the Probate Division, which the judges of such Division, with the concurrence of the president of the High Court, deem proper to be heard by a Divisional Court. Proviso as to Divisional Courts.

It is further provided by the same section that any cause or matter assigned to the Probate Division, may be heard at the request of the president of such Division, with the concurrence of the president of the High Court—namely, the Lord Chancellor—by any other judge of the High Court. Power to judges of other Divisions to hear probate matters under special circumstances.

The Court of Probate Acts, 1857 and 1858, appoint four registrars, two record keepers, and one sealer for the principal registry (*b*), one district registrar for each district registry, and clerks and other officers, as the judge may think fit, and these officers are all re-appointed by sect. 77 of the Supreme Court of Judicature Act, 1873. Re-appointment of officers.

The Court of Probate (now merged in the Probate Division) was, as we have seen, created by the Court of Probate Act, 1857 (20 & 21 Vict. c. 77).

By sect. 4 of that statute "the voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any Court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in her Majesty, and shall, except as hereinafter is mentioned, be exercised . . . . . in a Court to be called the Court of Probate." Testamentary jurisdiction to be exercised by a Court of Probate.

The exception alluded to refers to suits for legacies and Suits for

(*b*) There is now only one record keeper. He ranks as a first class clerk. The sealer ranks as a second class clerk.

legacies and distribution of residues.

the distribution of residues, which were formerly entertained by the Ecclesiastical Courts, but are expressly exempted from the jurisdiction of the Probate Court by the 23rd section of the Act, and, for all practical purposes, they may now be said to be within the exclusive jurisdiction of the Chancery Division.

County Court jurisdiction in probate matters. Court of Probate Act, 1857, s. 54; Court of Probate Act, 1858, s. 10.

By sect. 54 of the Act of 1857, as amended by sect. 10 of the Court of Probate Act, 1858 (21 & 22 Vict. c. 95), County Courts are given jurisdiction in matters relating to probate and administration, when the deceased had at the time of his death a fixed place of abode within the County Court district, where the gross personal estate is under the value of 200*l.* and the real estate does not amount to the value of 300*l.* or upwards.

Appeal from County Court.

By sect. 58 of the Act of 1857 a right of appeal is given to the Court of Probate from the decisions of County Court judges.

By Ord. LIX. r. 4 (Rules of the Supreme Court, 1883), "appeals from the decisions of County Courts in probate and administration actions lie to the Divisional Court of the Probate, Divorce, and Admiralty Division."

President of Probate, Divorce and Admiralty Division.

By sect. 2 of 54 & 55 Vict. c. 53, "whenever there is a vacancy in the office of a judge of the High Court who is president of the Probate, Divorce, and Admiralty Division thereof, it shall be lawful for her Majesty, by letters patent, to appoint to that office as president of the said Division any person who is a barrister of not less than fifteen years' standing, or who is a judge of the High Court or Court of Appeal, and the person so appointed shall, without prejudice to the rights of any judge of the Supreme Court existing at the passing of this Act, take precedence in Court next after all ordinary judges of the Court of Appeal appointed before the time at which he shall become an ordinary or *ex-officio* member thereof."

Prohibition against assigning irrelevant

By sect. 11, sub-sect. 3, Judicature Act, 1875 (38 & 39 Vict. c. 77), subject to rules of Court, a person commencing any cause or matter shall not assign the same

to the Probate Division, unless he would have been entitled to commence the same in the Court of Probate previous to the passing of the Act.

matters to Probate Division.

Sect. 18 provides that "all rules and orders of Court in force at the time of the commencement of this Act in the Court of Probate . . . . . except so far as they are expressly varied by the first schedule hereto, or by rules of Court made by order in council before the commencement of this Act, shall remain and be in force in the Probate Division of the High Court of Justice, until they shall respectively be altered or annulled by any rules of Court made after the commencement of this Act."

Existing rules and orders continued where not inconsistent with Act.

The same section further provides that "the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business of the Probate Court, the powers now conferred on the judge of the Probate Court by the Probate Act of 1857, s. 30."

Powers of president of Division as to common form business.

By sect. 82, Judicature Act, 1873, all persons who, previous to the Act, were commissioners to administer oaths in any of the superior Courts, are empowered to act in the same capacity in the Supreme Court; and by sect. 87, solicitors, attorneys, and proctors are, from the commencement of the Act, to be known only as solicitors of the Supreme Court.

Commissioners to administer oaths.

Solicitors.

By the Judicature Act, 1873, s. 24, sub-ss. 6 and 7, the Probate Division has concurrent jurisdiction with the other Divisions of the High Court.

Concurrent jurisdiction. Judicature Act, 1873, s. 24, subsects. 6 and 7.

"(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner

Legal rights.

as the same would have been recognized and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

Finality of proceedings.

"(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided."

CHAPTER II.

OF THE ORIGIN OF, AND ALSO OF NATURE AND FORM OF WILLS AND CODICILS.

Of the power of disposing of real and personal estate.

"From the time of the Norman Conquest to the passing of the Statutes of Wills (32 & 34 Hen. 8), a subject of this realm had, generally speaking, no testamentary power over land." He had, however, the power of making a will disposing of his *personal estate*, under which term were included "terms for years and chattels real," which were deemed personalty "on account of their original imbecility and insignificance."

This power would, however, appear to have been at one time limited, "for by the common law, as it stood according to Glanvil in the reign of Hen. II., a man's goods were to be divided into three equal parts: one of which went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or if he died without a wife he might then dispose of one moiety, and the other went to his children, and so, *e converso*, if he had no children, the wife was entitled to one moiety and he might bequeath the other; but if he died without either wife or issue, the whole was at his own disposal" (*a*).

This limitation was, however, gradually abolished until the power to dispose freely of personal estate became general throughout England; and now by sect. 3 of the Wills Act (1 Vict. c. 26) it is enacted "that it shall be lawful for every person to devise, bequeath, or dispose of by his will, executed in manner hereinafter required, all

(*a*) See Wms. on Exors. 10th ed. pp. 1, 2.

Wills and codicils, nature and form of.

real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death."

Previous to the passing of this enactment a man could devise only such lands as he possessed at the time of making his will, and no after-acquired lands would pass whatever words were used; although his will would pass "whatever personal estate he died possessed of, whether acquired before or after the date of the instrument."

What is a will.

Swinburne defines a last will and testament to be "The just sentence of our will touching that which we would have done after our death" (*b*).

1. It must be "just," meaning lawful, solemn and complete.

2. It must be "*the sentence*," *i.e.*, the advised purpose or destination of the testator's mind.

3. It must be "*of our will*," *i.e.*, "of our free will," not urged by violence or threats, or misled by fraud.

4. It must be to take effect on our death, "for the testament respecteth that which is to be performed after the death of the testator, and, therefore, so long as he liveth, the testament is of no force; but doth take its strength and is confirmed by the testator's death."

Lastly, it must, at the present day, be duly executed, in accordance with the law of England or of the land in which it is made; and all wills made in England bearing date on or after January 1, 1838, must be executed in accordance with the provisions of the Wills Act (1 Vict. c. 26).

Codicil—old interpretation of word.

At one time the appointment of an executor was essential to a testament, though even at that period "an instrument which would have amounted to a testament if an executor had been appointed was recognised as obligatory on him who had the administration of the goods of the deceased, under the appellation of a codicil: which is accordingly defined by Swinburne and Godolphin to be 'the just sentence of our will, touching that which we would have

(*b*) See Wms. on Exors. 10th ed. p. 4.

done after our death, without the appointing of an *executor*,' and hence a codicil was called 'an unsolemn will.' It was termed 'codicil,' 'codicillus,' as a diminutive of a testament, 'codex.'" Wills and codicils, nature and form of.

"But though it appears that 'codicils' might have been made by those who died without testaments, yet the more frequent use of a codicil was as an addition to or alteration of his will made by the testator, and annexed to, and to be taken as a part of his testament: in which sense the term 'codicil' is now used" (*c*). Modern interpretation of word.

"Although much greater strictness seems to have prevailed in earlier times, it has been decided in a great variety of modern instances, that it is not necessary that an instrument should be of a testamentary form in order to operate as a will; indeed, it may be considered as a settled point that the *form* of a paper does not affect its title to probate, provided it is the intention of the deceased that it should operate after his death, and the paper is duly attested in accordance with the Wills Act, 1 Vict. c. 26" (*d*). Testamentary form not necessary.

Neither is the wording of the instrument material, for it is not necessary that directions "how property should be disposed of after death should be in direct and imperative terms; wishes and requests have been deemed sufficient." Wording of testamentary paper.

"It is immaterial in what language a will is written, whether in Latin, French, or any other language. If the testator be a domiciled Englishman, the effect of the foreign tongue employed can only be looked at to ascertain what are the equivalent expressions in English" (*e*). Language used, English or foreign.

(*c*) Wms. on Exors. 10th ed. p. 5. "A codicil is 'an addition or supplement added unto a will or testament after the finishing of it for the supply of something which the testator had forgotten, or to helpe some defect in the will' (Termes de la Ley)." Stroud's Judicial Dictionary, 2nd ed. p. 331.

(*d*) *Ibid.* p. 81. See also *Colyer, In goods of* (1889), 14 P. D. 48; 60 L. T. 368; *Milnes* v. *Foden*, (1890) 15 P. D. 105; 59 L. J. P. 62; 62 L. T. 498.

(*e*) Wms. on Exors. 10th ed. pp. 84, 85.

Materials with which will written not material.

Neither are the materials important on which or by which a testamentary document is written. "Thus a will or codicil or any part thereof may be made or altered in pencil as well as ink" (*f*). Nor is it material whether a testamentary document be drawn up and copied out by the hand of the testator himself or that of a third person by his direction.

Will made by attorney or agent in his own favour.

Even if the attorney or agent of the testator write a testamentary paper entirely in his own favour, the document is not thereby absolutely void; but "this circumstance creates a suspicion of improper conduct, and renders necessary very clear proof of volition and capacity as well as of knowledge by the testator of the contents of the instrument" (*g*).

Cannot be irrevocable.

But a man cannot make his will irrevocable even in express terms, for directly a document becomes irrevocable it ceases to be of a testamentary character, the essence of a will being that it is ambulatory during the life of the testator (*h*).

Paper not intended as will may operate as such.

Even a paper not intended as a will, but as an instrument of a different nature, if it cannot operate in the latter, it may in the former character, so far as it is intended to take effect after the death of the person executing it (*i*).

Principles deciding what is a will.

"The true principle to be deduced from the authorities appears to be that, if there is proof, either in the paper itself or from clear evidence *dehors*, first, that it was the intention of the writer of the paper to convey the benefits

(*f*) Wms. on Exors. 10th ed. p. 85.

(*g*) *Ibid.* p. 86.

(*h*) *Ibid.* p. 7. See also *Robinson, In goods of* (1867), L. R. 1 P. & D. 384; 36 L. J. P. 93; 17 L. T. 19.

(*i*) *Bartholomew* v. *Henley* (1820), 2 Phill. 318; *Masterman* v. *Maberley* (1830), 2 Hagg. 247; *Morgan, In goods of* (1866), L. R. 1 P. & D. 214; 35 L. J. P. 98; 14 L. T. 894; *Cock* v. *Cooke* (1867), L. R. 1 P. & D. 241; 36 L. J. P. 5; 15 L. T. 296; *Robertson* v. *Smith* (1870), L. R. 2 P. & D. 43; 36 L. J. P. 41; 22 L. T. 417; *Baxter, In goods of*, (1903) P. 12; 72 L. J. P. 2; 87 L. T. 748.

by the instrument which would be conveyed by it if considered as a will; secondly, that death was the event that was to give effect to it; then, whatever may be its form, it may, assuming that there is execution in compliance with the Wills Act, be admitted to probate as testamentary." For every testamentary paper entitled to operate as a will is also entitled to probate (*k*). Wills and codicils, nature and form of.

Therefore, deeds executed with the requisite formalities have been held to pass real estate, and to be entitled to probate as wills, even in a case where the attesting witnesses had no precise recollection of the circumstances of its execution (*l*). Deeds operating as wills.

So, a paper containing a direction to executors, a letter addressed to a devisee, papers in the following terms:— "I wish my sister to have my bank book for her own use"; "I have given all I have to A. and her two sons," orders on savings banks directing them to pay money to the wife of the deceased, having been duly executed, have been held to be testamentary, the Court being satisfied by evidence that they were not intended to take effect until after the death of the testator (*m*). Examples of testamentary papers.

The Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 25, sub-ss. 1, 2, empowers any member to nominate any person or persons to whom the

(*k*) Wms. on Exors. 10th ed. pp. 82, 83; *King's Proctor* v. *Daines* (1831), 3 Hagg. 231; *Jones* v. *Nicholay* (1852), 2 Robert. 288; *Robinson, In goods of* (1867), L. R. 1 P. & D. 384; 36 L. J. P. 16; 17 L. T. 19; *Milnes* v. *Foden* (1890), 15 P. D. 105; 59 L. J. P. 62; 62 L. T. 498; *English, In goods of* (1865), 3 S. & T. 586; 34 L. J. P. 5: 11 L. T. 612.

(*l*) See *Robson, In re* (1882), 19 C. D. 156; 51 L. J. Ch. 337; 45 L. T. 418; *Doe* v. *Cross* (1846), 8 Q. B. 714; 15 L. J. Q. B. 217; *Slinn, In goods of* (1890), 15 P. D. 156; 59 L. J. P. 82; 63 L. T. 229; *Colyer, In goods of* (1889), 14 P. D. 48; 60 L. T. 368.

(*m*) See *Cock* v. *Cooke* (1867), L. R. 1 P. & D. 241; 36 L. J. P. 5; 15 L. T. 296; *Coles, In goods of* (1872), 2 P. & D. 362; 41 L. J. P. 41; 25 L. T. 852; *Chaworth* v. *Beech* (1799), 4 Ves. 555; *Stewart, In goods of* (1863), 3 S. & T. 192; 32 L. J. P. 94.

Nomination under Industrial and Provident Societies Act, 1893, s. 25 (1), (2).

amount credited to him in the societies' books shall be transferred at his decease, provided such amount does not exceed 100*l.* Where a nomination paper executed by the nominator under the above section, in the presence of two witnesses who signed it in his presence, was invalid as a nomination by reason of the amount it purported to dispose of being in fact over 100*l.*; the Court held it to be testamentary and admitted it as a will (*n*).

Document appointing guardians only.

It is not necessary that a document merely appointing guardians, but not disposing of any property should be proved, even though it may have been executed as a will (*o*).

Codicil revoking former wills only.

A codicil not containing any disposition of property but simply revoking all former wills, is of a testamentary nature and ought to be admitted to probate (*p*); but there seems to be some doubt whether a writing which merely revokes the will to which it is attached ought to be admitted to probate (*q*).

Documents not entitled to probate.

On the other hand, however clearly testamentary a paper may appear on the face of it, it will not be admitted to probate if the Court be satisfied that it was not executed *animo testandi;* and if the purport of a document be equivocal, it lies on the person setting it up to show that it was executed *animo testandi* (*r*).

Burden of proof.

Express declaration by testator.

But nothing can override an express declaration by a testator; therefore, where a duly executed document in

(*n*) *Baxter, In goods of*, (1903) P. 12; 72 L. J. P. 2; 87 L. T. 748.

(*o*) See *Morton, In goods of* (1864), 3 S. & T. 422; 33 L. J. P. 87; 9 L. T. 809.

(*p*) *Brenchley* v. *Still* (1852), 2 Robert. 162.

(*q*) *Fraser, In goods of* (1870), 2 P. & D. 40; 39 L. J. P. 20; 21 L. T. 680; *Hicks, In goods of* (1869), 1 P. & D. 683; 38 L. J. P. 65; 21 L. T. 300; *Hubbard, In goods of* (1866), L. R. 1 P. & D. 53; 35 L. J. P. 27.

(*r*) See *Nicholls* v. *Nicholls* (1814), 2 Phill. 180; *Lister* v. *Smith* (1864), 3 S. & T. 282; 33 L. J. P. 29; 9 L. T. 578; *King's Proctor* v. *Daines* (1831), 3 Hagg. 231; *Griffin* v. *Ferrard* (1835), 1 Curt. 199; *Coventry* v. *Williams* (1843), 3 Curt. 790; *Thorncroft* v. *Lashmar* (1862), 2 S. & T. 479; 31 L. J. P. 150; 6 L. T. 476.

the form of a will was headed with these words, "this is not meant as a legal will, but as a guide," the Court refused to admit it to probate (*s*). Wills and codicils, nature and form of.

A will may be made contingent on the happening of a certain event, or on the assent of a third party; but such a will can only be admitted to probate in the event of the contingency happening on which it is dependent (*t*). Contingent will.

It is often, however, a question whether the disposition of the property bequeathed by it is dependent upon the happening of some event or calamity referred to in the will, or whether the imminence of such event, or calamity, is merely a reason for making the will: in the former case the will is contingent, in the latter, it is not (*u*). What amounts to.

So a will containing the following words, "On leaving this station for T. and M., in case of my death on the way, know all men this is a memorandum of my last will and testament," was held not to be contingent (*x*).

A letter written by a military officer to his sister during the Maori War, in 1864, containing directions as to the disposition of his property in case of his being killed, valid as a will of a soldier on active service and never subsequently revoked, was held not to be contingent on his dying at that particular time, and admitted to probate

(*s*) *Ferguson Davie* v. *Ferguson Davie* (1890), 15 P. D. 109; 59 L. J. P. 70; 62 L. T. 703.

(*t*) See *Parsons* v. *Lanoe* (1748), 1 Ves. sen. 190; 1 Saund. 279 d; *Porter, In goods of* (1870), L. R. 2 P. & D. 22; 39 L. J. P. 12; 21 L. T. 680; *Smith, In goods of* (1869), L. R. 1 P. & D. 717; 38 L. J. P. 85; 21 L. T. 340.

(*u*) *Porter, In goods of, supra.* See also *Burton* v. *Collingwood* (1831), 4 Hagg. 176; *Southall* v. *Jones* (1859), 1 S. & T. 298; 28 L. J. P. 112; *Roberts* v. *Roberts* (1862), 2 S. & T. 337; 31 L. J. P. 46; 5 L. T. 689; *Cawthorn, In goods of* (1864), 3 S. & T. 417; 33 L. J. P. 23; *Thorne, In goods of* (1865), 4 S. & T. 36: 34 L. J. P. 131; 12 L. T. 639; *Dobson, In goods of* (1866), L. R. 1 P. & D. 88; 35 L. J. P. 54; 13 L. T. 758; *Martin, In goods of* (1867), L. R. 1 P. & D. 380; 36 L. J. P. 116; 17 L. T. 32; *Robinson, In goods of* (1871), 40 L. J. P. 16; 23 L. T. 397; *Lindsay* v. *Lindsay* (1873), L. R. 2 P. & D. 459; 42 L. J. P. 32; 27 L. T. 322; *Newton, In goods of*, or *Jobson* v. *Ross* (1873), 42 L. J. P. 58; 28 L. T. 677.

(*x*) *Mayd, In goods of* (1881), 6 P. D. 17; 50 L. J. P. 7.

Contingent will, what amounts to.

after his death, which did not take place until 1896 (*y*); and a letter written by a domiciled Scotchman, who was starting on a voyage from India, to a friend, which contained directions as to the disposition of the writer's property after his death and was valid as a will by Scotch law, was held not to be contingent, although it purported to be written in case his wife or himself should die on the voyage home, a contingency which did not arise (*z*).

Conjoint or mutual wills.

I extract the following from Williams on Executors, 10th ed., p. 7:—"There cannot be a conjoint or mutual will; an instrument of such a nature is unknown to the testamentary law of this country (*a*). But there are several authorities which appear to show that this doctrine does not go further than to deny that a conjoint or mutual will can be made with the characteristic quality of being irrevocable, unless with the concurrence of the joint or mutual testators. Such a will is certainly revocable (*b*). But if either of the testators die without revoking it, the will is valid as far as respects his property (*c*). Where, however, two testators made a joint will containing devises and legacies to take effect after the decease of both of them, it was held that probate could not be granted of the will during the lifetime of either (*d*); but this case has been disapproved of in a case decided in Ireland" (*e*).

Where a husband and wife made a joint will, the Court,

(*y*) *Spratt, In goods of*, (1897) P. 28; 66 L. J. P. 25; 75 L. T. 518.

(*z*) *Halford* v. *Halford*, (1897) P. 36; 66 L. J. P. 29; 75 L. T. 520.

(*a*) 1 Cowp. 268, in Lord Mansfield's judgment; *Hobson* v. *Blackburn* (1833), 1 Add. 277; 1 Myl. & K. 571; 2 L. J. (N. S.) Ch. 166.

(*b*) As to the irrevocability of such a will in equity, see Wms. on Exors. 10th ed. p. 94.

(*c*) *Stracey, In goods of* (1855), Dea. & Sw. 6; *Lovegrove, In goods of* (1862), 2 S. & T. 453; 31 L. J. P. 453; 6 L. T. 131.

(*d*) *Raine, In goods of* (1858), 1 S. & T. 144, *coram* Sir C. Cresswell. "But *quære*, whether the delay of the effect of the will interfered with its title to immediate probate, as the will of the deceased testator": Wms. on Exors. 10th ed. p. 7.

(*e*) *Miskelly, In goods of* (1870), Ir. Rep. 4 Eq. 62. See also *Piazzi-Smyth, In goods of, infra.*

upon the death of the wife, granted probate of so much of the instrument as became operative on her death (*f*). Conjoint or mutual wills.

Where two persons have made mutual wills in pursuance of an agreement, the one who dies first, dies with the implied promise of the survivor, that such agreement shall stand, and if the survivor after taking any benefit from the agreement alters his will, although it will stand if duly executed, his personal representative will take the property on trust to perform the contract between the testators, because the will of the testator who dies first becomes irrevocable (*g*).

(*f*) *Piazzi-Smyth, In goods of*, (1898) P. 7; 67 L. J. P. 4; 77 L. T. 375.

(*g*) *Stone* v. *Hoskins*, (1905) P. 194; 74 L. J. P. 110; 93 L. T. 441.

CHAPTER III.

OF THE KNOWLEDGE AND APPROVAL BY THE TESTATOR OF THE CONTENTS OF A TESTAMENTARY INSTRUMENT.

Testator must know and approve of contents of will.

It is essential to the validity of a testamentary document, that the testator should know and approve of its contents (*a*); and the burden of proving that the testator knew and approved of the contents of his will lies on the party propounding it (*b*).

But if it be proved or admitted that a testator is of sound disposing mind, and that a testamentary document has been read over to him, or that he has read it to himself, and has put his signature to it, he must be taken to have known and approved of every part of it (*c*).

Presumption of knowledge and approval may be rebutted.

But this presumption of the testator's knowledge extending to every part of the will may be rebutted where the proof that the will was read over to the testator is open to suspicion, or where there is room for a suggestion of fraud, especially in cases where the will has been suggested and propounded by strangers in blood to the testator, but who are beneficiaries under it (*d*).

Knowledge of contents.

The knowledge of a third person may be equivalent to the knowledge of the testator; so, where a testatrix sent to her solicitor telling him to prepare her will, and adding

(*a*) *Hastelow* v. *Stobie* (1866), L. R. 1 P. & D. 64; 35 L. J. P. 18; 13 L. T. 473.

(*b*) *Cleare* v. *Cleare* (1869), L. R. 1 P. & D. 655; 38 L. J. P. 81; 20 L. T. 497.

(*c*) *Atter* v. *Atkinson* (1869), L. R. 1 P. & D. 665; 20 L. T. 404. See also *Guardhouse* v. *Blackburn* (1866), L. R. 1 P. & D. 109; 35 L. J. P. 116; 14 L. T. 69.

(*d*) *Fulton* v. *Andrew* (1875), L. R. 7 H. L. 465; 44 L. J. P. 17; 32 L. T. 209. See also *Tyrrell* v. *Painton*, *post*, p. 20, note (*r*).

that he knew her wishes, it was held that there was evidence that the testatrix knew and approved of its contents, although it was not read over to her before she executed it (*e*); but if it be shown that a testator executed one document by mistake for another, no presumption of knowledge and approval of contents can arise, however similar the contents of the two documents may have been (*f*).

Knowledge and approval by testator.

The following is from Williams on Executors, 10th ed., p. 254, note (*e*):—"Approbation will have the effect of prior instruction: *Forfar* v. *Heastie* (1756), 2 Cas. *temp.* Lee, 310; *Durnell* v. *Corfield* (1845), 1 Robert. 56. Moreover, a testator may, if he likes, authorise another person to make a will for him and may say, 'I do not know what you have put down, but I am quite ready to execute it,' and such a will would be admitted to probate. *Per* Sir C. Cresswell, *Cunliffe* v. *Cross* (1863), 3 S. & T. 38; 32 L. J. P. 68; 8 L. T. 172. Accordingly that learned judge held a plea 'that the alleged codicil was not prepared in conformity with the intentions of the deceased, and the deceased, at the time of the execution of the alleged codicil, was ignorant of the contents thereof,' to be bad on demurrer. If a testatrix has given instructions for her will and it is prepared in accordance with them, the will will be valid, though at the time of execution the testatrix merely recollects that she has given those instructions, but believes that the will is in accordance

Will made by agent.

(*e*) *Goodacre* v. *Smith* (1867), L. R. 1 P. & D. 359; 36 L. J. P. 43; 15 L. T. 511. See also *Parker* v. *Felgate*, *post*, p. 18; *Collins* v. *Elstone*, *post*, p. 20.

(*f*) *Hunt*, *In goods of* (1875), L. R. 3 P. & D. 250; 44 L. J. P. 43; 33 L. T. 321; *Clark*, *In goods of* (1840), 2 Curt. 329. See also, on the subject of knowledge and approval generally, *Billinghurst* v. *Vicars* (1810), 1 Phill. 191; *Barry* v. *Butlin* (1838), 2 Moo. P. C. 480; *Mitchell* v. *Thomas* (1846), 6 Moo. P. C. 137; *Browning* v. *Budd* (1848), 6 Moo. P. C. 435; *Paske* v. *Ollatt* (1815), 2 Phill. 324; *Ingram* v. *Wyatt* (1828), 1 Hagg. 401; *Baker* v. *Batt* (1838), 2 Moo. P. C. 317; *Fawcett* v. *Jones* (1810), 3 Phill. 434; *Wheeler* v. *Alderson* (1831), 3 Hagg. 598.

Knowledge and approval by testator. Will made by agent.

with them. *Parker* v. *Felgate* (1883), 8 P. D. 171; 52 L. J. P. 95; see also *Middlehurst* v. *Johnson* (1861), 30 L. J. P. 14 (*g*); but see contra, *Hastelow* v. *Stobie* (1866), L. R. 1 P. & D. 64; 35 L. J. P. 18; 13 L. T. 473; *S. C.*, 11 Jur. N. S. 1039, where Sir J. P. Wilde held a plea 'that the deceased did not know and approve of the contents of the will,' to be good. See also *Cleare* v. *Cleare* (1869), L. R. 1 P. & D. 655; 38 L. J. P. 81; 21 L. T. 497; *Sutton* v. *Sadler* (1857), 3 C. B. N. S. 87; 26 L. J. C. P. 284; *Karunaratne* v. *Ferdinandus*, (1902) A. C. 405; 71 L. J. P. C. 76; 86 L. T. 329. But it may be doubted whether the view taken by Sir C. Cresswell is not more correct. It is surely a somewhat harsh construction of the law that a man shall not be allowed to confide in his friend or solicitor, and depute him to draw up his will and adopt it when so drawn up, without ascertaining what the contents of it are; particularly in wills containing complicated limitations it would seem to be unjust to require that the testator should understand each limitation which the solicitor in whom he has confided has thought proper to insert."

Words introduced into will by mistake, inadvertence or fraud.

Where words have been introduced into a will by mistake, inadvertence, or by fraud, and the will has not been read over to the testator, the Court will, if possible, carry out the testator's wishes by their omission from the probate of the will (*h*).

In the case of *Bushell, In goods of* (*i*), Butt, J., granted probate of a will with the word "*Bristol*" substituted for "*British*," which latter word had been inserted in the will by mistake in copying the draft will; and in the case of *Huddleston, In goods of* (*k*), the same learned judge allowed

(*g*) *Parker* v. *Felgate* (1883), 8 P. D. 171; 52 L. J. P. 95; commented on and approved in *Perera* v. *Perera*, (1901) A. C. 354; 70 L. J. P. C. 46; 84 L. T. 371.

(*h*) See *Morrell* v. *Morrell* (1882), 7 P. D. 68; 51 L. J. P. 49; 46 L. T. 485; *Boehm, In goods of*, (1891) P. 247; 60 L. J. P. 80; 64 L. T. 806.

(*i*) (1888) 13 P. D. 7; 57 L. J. P. 16; 58 L. T. 58.

(*k*) (1891) 63 L. T. 255.

the word "*including*" to be substituted for "*excluding.*" But in the case of *Walkeley, In goods of* (*l*), where a clerk had copied the number of one house twice over and omitted the number of another house, and the will was read over to the testatrix, but the clerical error was not discovered till after her death, Sir F. H. Jeune said his difficulty was as to putting a number in, not in striking a figure out, though he knew that in *Bushell, In goods of*, it was boldly done, and he declined to permit the insertion of the correct number, but struck out the number inserted by mistake, leaving a blank in its place. And in *Schott, In goods of* (*m*), the same learned judge, upon an application to rectify a clerical error by substituting the word "*residue*" for the word "*revenue*," held that words might be struck out but nothing could be inserted, and in the course of his judgment stated that the cases of *Bushell, In goods of*, and *Huddleston, In goods of*, were incorrect and must not be followed (*n*).

Knowledge and approval by testator.

Words introduced into will by mistake, inadvertence or fraud.

Where the solicitor who drew the will of the testatrix mistook the extent of her interest in certain land, and the will was executed devising only an "undivided moiety," the Court, notwithstanding the fact that a draft of the will had been sent for her approval, and she had returned it with certain alterations in other parts, found as a fact that she did not know and approve of the clause as drawn, and directed that the restrictive words should be eliminated from the probate (*o*).

Where a portion of a will has been introduced by fraud or perhaps inadvertence, it may be rejected, and probate granted of the remainder if the two are severable. But where the rejection of part alters the sense of the remain-

Probate of part of will only granted.

(*l*) (1894) 69 L. T. 419.

(*m*) (1901) P. 190; 70 L. J. P. 46; 84 L. T. 571.

(*n*) See also *Vaughan* v. *Clerk* (1902), 87 L. T. 144.

(*o*) *Brisco* v. *Baillie Hamilton*, (1902) P. 234; 71 L. J. P. 121; 87 L. T. 746.

der, it is a question whether there is a valid will within the meaning of sect. 9 of the Wills Act (1 Vict. c. 26) (*p*).

Words of revocation introduced into will by mistake.

A testatrix left two wills and a codicil to the first will. The second will disposed only of a small policy of insurance on her life, and was prepared for her on a printed form by one of her executors. The form commenced with a clause revoking all testamentary dispositions, but when this was read over to her she objected to it, saying that she did not want to revoke her first will and codicil. The person who prepared the will assured her that as it only related to the insurance policy, the words of revocation would not apply to her former testamentary dispositions, and that to make an erasure might invalidate the will. Being satisfied by this assurance she duly executed the will. Held that she must be taken to have known and approved of these words of revocation (*q*).

Will obtained or prepared by beneficiary, *onus probandi*.

The rule that those who take a benefit under a will and have been instrumental in obtaining or preparing it, have the onus thrown upon them of showing the righteousness of the transaction, is not confined to the single case in which a will is prepared by or on the instructions of the person benefited, but to all cases which excite the suspicion of the Court (*r*).

(*p*) *Rhodes* v. *Rhodes* (1882), 7 A. C. 192; 51 L. J. P. C. 53; 46 L. T. 463.

(*q*) *Collins* v. *Elstone*, (1893) P. 1; 62 L. J. P. 26; 67 L. T. 624. See also *Beamish* v. *Beamish* (1894), 1 Ir. 7.

(*r*) *Tyrrell* v. *Painton*, (1894) P. 151; 70 L. T. 453, C. A. See also *Barry* v. *Butlin* (1838), 2 Moo. P. C. 480; *Fulton* v. *Andrew* (1875), L. R. 7 H. L. 465; 44 L. J. P. 17; 32 L. T. 209; *Brown* v. *Fisher* (1891), 63 L. T. 465. See also *Garnett Botfield* v. *Garnett Botfield*, (1901) P. 335; 71 L. J. P. 1; 85 L. T. 641; *Wilson* v. *Bassil*, (1903) P. 239; 72 L. J. P. 89; 89 L. T. 586.

CHAPTER IV.

WHO MAY MAKE A WILL:—ALIENS—THE SOVEREIGN—PERSONS INCOMPETENT FOR WANT OF SUFFICIENT LEGAL DISCRETION.

Will, who may make. General principles.

"It may be laid down generally that all persons are capable of disposing of their personal estate by testament who have sufficient discretion, their own free will, and who have not been guilty of certain offences. Wherefore there are three grounds of incapacity—(1) the want of sufficient legal discretion; (2) the want of liberty or free will; (3) the criminal conduct of the party" (*a*).

Aliens.

Formerly no alien could hold real estate in this country, therefore the question of its disposition by will did not arise. With respect to personal property, there was a distinction between alien friends and enemies; the former being capable of disposing of their personal estate by will, whilst the latter required the King's licence to enable them to do so.

Now, by sect. 2 of the Naturalization Act, 1870, "real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject."

Will of foreigner not executed in accordance with the law of his own country.

But it was held by Sir James Hannen that a will of a foreigner not domiciled in England, executed abroad according to the formalities required by English law, but not according to those required by her own country, was invalid, notwithstanding the provisions of this section, and notwithstanding also the fact that in the particular case the deceased was by birth an Englishwoman (*b*).

(*a*) Wms. on Exors. 10th ed. p. 8.

(*b*) *Von Buseck, in goods of* (1882), 6 P. D. 211; 51 L. J. P. 9.

Will, who may make.

In the subsequent case of *Bloxam* v. *Favre* (*c*), in which another attempt was made to obtain probate of the same will of the same lady, the point was carried up to the Court of Appeal, where the views of Sir James Hannen were adopted and confirmed.

The King or Queen.

With respect to the power of the reigning sovereign to make a will of his or her personal property, it would appear that the power to do so is created by two statutes, the one passed in the sixteenth year of Richard the Second, and the other 39 & 40 Geo. 3, c. 88 (*d*). It would further appear that the Probate Division has no jurisdiction to grant probate of the will of a deceased sovereign (*e*).

The Queen Consort.

By sects. 8 and 9 of 39 & 40 Geo. 3, c. 88, it is provided that the Queen Consort for the time being may, during the joint lives of herself and the King, by will in writing signed and published by her in the presence of three witnesses, dispose of her private lands and hereditaments, and by will in writing bequeath her private personal estate as effectually as if she were sole and unmarried.

Persons incapable from want of discretion.

Under the head of persons incapable for want of sufficient legal discretion, are included, infants, idiots, deaf and dumb, blind, persons who cannot read, lunatics, persons who from old age or other causes have out-lived their understanding, and persons drunk (*f*).

Infant.

By sect. 7 of the Wills Act (1 Vict. c. 26) it is enacted, "that no will made by any person under the age of twenty-one years shall be valid."

Idiot.

An idiot is defined to be a fool or madman from his

(*c*) (1884), 8 P. D. 101; 9 P. D. 130; 53 L. J. P. 26; 50 L. T. 766.

(*d*) For the provisions of these statutes, and on this subject generally, see Wms. on Exors. 10th ed. pp. 9—11.

(*e*) See *George III., In goods of* (1863), 1 Add. 255; 3 S. & T. 199; 32 L. J. P. 15.

(*f*) See Wms. on Exors. 10th ed. pp. 12—29.

nativity, who never had any lucid intervals. But whether a man be an idiot or not is a question of fact (*g*). Will, who may make.

"One who is deaf and dumb from his nativity is, in presumption of law, an idiot, and therefore incapable of making a will; but such presumption may be rebutted, and if it sufficiently appears that he understands what a testament means, and has a desire to make one, then he may by signs and tokens declare his testament. One who is not deaf and dumb by nature, but being once able to hear and speak, if by some accident he loses both his hearing and the use of his tongue, then, in case he shall be able to write, he may with his own hand write his last will and testament. But if he be not able to write, then he is in the same case as those which be both deaf and dumb by nature, *i.e.*, if he have understanding, he may make his testament by signs, otherwise not at all. Such as can speak and cannot hear, they may make their testaments, as if they could both speak and hear, whether that defect came by nature or otherwise. Such as be speechless only, and not void of hearing, if they can write, may very well make their testaments themselves by writing: if they cannot write, they may also make their testaments by signs, so that the same signs be sufficiently known to such as be then present" (*h*). Deaf and dumb.

A blind person may make his or her will, but before such a will is admitted to probate there must be satis- Blind persons.

(*g*) See Wms. on Exors. 10th ed. p. 12.

(*h*) *Ibid.* pp. 12, 13; citing Swinb. Pt. II.; Godolph. Pt. I.; *Dickenson* v. *Blisset* (1650), 1 Dick. 268, and the judgment of Wood, V.-C., in *Harrod* v. *Harrod* (1854), 1 K. & J. 4; where a testator who was deaf and dumb made his will by communicating his testamentary instructions to an acquaintance by signs and motions, who prepared a will in conformity with such instructions, which was afterwards duly executed by the testator, the Court required an affidavit from the drawer of the will, stating the nature of the signs and motions by which the instructions were communicated to him: *Owston, In goods of* (1862), 2 S. & T. 461; 31 L. J. P. 177; 6 L. T. 368; *Geale, In goods of* (1864), 3 S. & T. 431; 33 L. J. P. 125.

Will, who may make.

factory proof that the will was read over to the testator before execution, and that, at the time of its execution, he knew and approved of its contents (*i*).

Persons who cannot read.

And the same precautions would appear to be necessary in the case of persons who cannot read (*k*).

Lunatic.

Lunacy differs materially from idiotcy (*l*). A lunatic is a person usually mad, but having intervals of reason, who, during the time of his insanity, cannot make a testament, nor dispose of anything by will (*m*).

Presumption of sanity.

Sanity must be presumed until the contrary is shown. If, therefore, a will, rational on the face of it, be produced, and its due execution proved, the Court must find in its favour; for the burden of proof is *primâ facie* on the person seeking to invalidate what, on the face of it, purports to be a legal act. But this presumption of sanity is, at most, a mixed question of law and fact; therefore, if the party opposing the will produce evidence of the testator's insanity, the burden of proof is shifted, and it lies on the party setting up the will to show that it was the last act of a capable testator (*n*).

Insanity subsequent

But a will is not revoked by the subsequent insanity of the testator (*o*). So where there is proof of the due execu-

(*i*) Wms. on Exors. 10th ed. pp. 13, 14; citing Swinb. Pt. II.; Godolph. Pt. I.; Burn, E. L. 60; *Barton* v. *Robins*, 3 Phill. 455, n.; *Re Axford* (1859), 1 S. & T. 540. The single oath of the writer has been allowed sufficient . . . to prove the identity of the will. *Ibid.*; *Fincham* v. *Edwards* (1841), 3 Curt. 63; affd. on appeal, 4 Moo. P. C. 198; *Longchamp* v. *Fish* (1807), 2 Bos. & Pull. N. R. 415.

(*k*) *Ibid.* p. 14; citing 4 Burn, E. L. 61; *Barton* v. *Robins*, *supra*.

(*l*) See *ibid.* pp. 14—29.

(*m*) *Ibid.* p. 14; citing *Beverley's Case*, 4 Co. 124 b; 2 Inst. 14; Swinb. Pt. II. s. 3; Godolph. Pt. I. c. 8, s. 2.

(*n*) *Ibid.* pp. 15, 16. See also *Smee* v. *Smee* (1880), 5 P. D. 84; 49 L. J. P. 8; approved in *Jenkins* v. *Morris* (1880), 14 C. D. 674; 42 L. T. 817. And see *Hope* v. *Campbell*, (1899) A. C. 1; *Sutton* v. *Sadler* (1857), 3 C. B. N. S. 87; 26 L. J. P. 284. See also accord. *Symes* v. *Green* (1859), 1 S. & T. 401; 28 L. J. P. 83; *Cleare* v. *Cleare* (1869), L. R. 1 P. & D. 655, at p. 657.

(*o*) Swinb. Pt. II. s. 3, pl. 3; 4 Co. 61 b.

tion of a will by a testator who afterwards becomes insane, the onus of showing that it had been mutilated by the testator when of sound mind is on the party alleging the revocation (*p*). to execution of will.

Insanity, to upset a will rational on the face of it, must be proved by the clearest possible evidence, and the Court should rely but little on the mere opinion of witnesses, but look to the grounds of such opinions (*q*). The opinions of medical men as experts, whether founded on personal knowledge or observation, or on the case as proved at the trial, are admissible in evidence. Evidence of insanity. Opinions of medical men.

It has been decided by the House of Lords that letters written to the testator, and not acted upon or indorsed or answered by him, are not evidence of his sanity (*r*). Letters written to testator.

"The presumption of law is, that a verdict of a jury under a commission of lunacy that the party, the subject of the commission, is of unsound mind, is well founded, and if the commission remained unsuperseded, that the party continued a lunatic until his death. Such presumption, however, may be rebutted and displaced by positive proof of entire recovery or possession of a lucid interval when a testamentary instrument was executed" (*s*). Commission of lunacy.

"If a lunatic person have clear or calm intermissions (usually called lucid intervals), then during the time of such quietness and freedom of mind, he may make his Will made during a lucid interval.

(*p*) *Harris* v. *Berrall* (1859), 1 S. & T. 153; *Allan* v. *Morrison*, (1900) A. C. 604, at pp. 610, 611; 69 L. J. P. C. 141, where a testatrix after making a will became lunatic, and was confined in an asylum, and after her death her will could not be found, the Court granted probate of a draft to her next of kin, with the consent of the Master in Lunacy and of the receiver of the deceased's property, appointed under the Lunacy Act of 1890: *Crandon, In goods of*, 84 L. T. 330.

(*q*) Per Sir John Nicholl in *Kindleside* v. *Harrison* (1815), 2 Phill. 459.

(*r*) *Doe* d. *Wright* (1836), 4 Bing. N. C. 489; 5 L. J. K. B. 124. See Rosc. Evid. 14th ed. 973.

(*s*) Wms. on Exors. 10th ed. p. 25, citing *Prinsep* v. *Dyce Sombre* (1856), 10 Moo. P. C. 232; Dea. & Sw. 22.

Will, who may make.

testament, appointing executors and disposing of his goods at pleasure" (*t*).

Lucid interval.

But in order to establish the validity of a will made during a *lucid interval*, the Court must be satisfied that such lucid interval was a substantial, though a temporary, recovery. A mere cessation of the violent symptoms is not enough; there must be restoration of the mind sufficient to enable the party soundly to judge of the act; and the Court should examine whether the will was framed by the party himself without assistance, and be satisfied that the lucid interval was of sufficient duration for the performance of the act; and in all cases where the will of a testator afflicted with habitual insanity, with intermissions, is under consideration, the contents of the instrument itself affords valuable, though not conclusive, evidence as to his state of mind when he made it (*u*).

(*t*) Wms. on Exors. 10th ed. p. 15; citing Swinb. Pt. II. s. 3, pl. 3; Godolph. Pt. I. c. 8, s. 2; Wentw. c. 1, p. 33, 14th ed.; *Hall* v. *Warren* (1804), 9 Ves. 610; *Rodd* v. *Lewis* (1756), 2 Cas. temp. Lee, 176.

(*u*) *Ibid.* pp. 15—21. See on the subject of testamentary capacity of a lunatic during a lucid interval: *Cartwright* v. *Cartwright* (1793), 1 Phill. 100; *Att.-Gen.* v. *Parnther* (1792), 3 Bro. C. C. 443; *Hall* v. *Warren*, *supra*; *Kemble* v. *Church* (1831), 3 Hagg. 273; *White* v. *Driver* (1810), 1 Phill. 88; *Brogden* v. *Brown* (1824), 2 Add. 445; *Ayrey* v. *Hill* (1825), 2 Add. 210; *Kindleside* v. *Harrison*, *supra*, note (*q*); *Holyland*, *Ex parte* (1805), 11 Ves. 11; *Chambers* v. *Queen's Proctor* (1838), 2 Curt. 447; *Bannatyne* v. *Bannatyne* (1852), 2 Robert. 472; *Nicholls* v. *Binns* (1859), 1 S. & T. 239; *Scruby* v. *Fordham* (1823), 1 Add. 90; *M'Adam* v. *Walker* (1813), 1 Dow. 178; *Clarke* v. *Lear* (1791), 1 Phill. 119; *Evans* v. *Knight* (1823), 1 Add. 237; *Coghlan* v. *Coghlan* (1793), 1 Phill. 120; *Williams* v. *Goude* (1831), 1 Hagg. 577; *Borlase* v. *Borlase* (1846), 4 No. of Cas. 106; *Waring* v. *Waring* (1848), 6 Moo. P. C. 351; *Dimes* v. *Dimes* (1856), 10 Moo. P. C. 422. And see further the following authorities on the subject of testamentary capacity generally: *Beverley's Case*, 4 Co. 124 b; 2 Inst. 14; Reg. Brev. 267; *Frere* v. *Peacocke* (1844), 3 Curt. 644; *Groom* v. *Thomas* (1830), 2 Hagg. 434; *Hoby* v. *Hoby* (1827), 1 Hagg. 146; *Fowlis* v. *Davidson* (1845), 6 No. of Cas. 473, 474; *Greenwood's Case* (1825), 3 Add. 96; *White* v. *Wilson* (1807), 13 Ves. 89; 14 Ves. 151; *Fulleck* v. *Allinson* (1831), 3 Hagg. 527; *Mudway* v. *Croft* (1843), 3 Curt. 671; *Austen*

Partial insanity has been defined by Lord Brougham as "insanity, or unsoundness, always existing, although only occasionally manifest" (*x*). Partial insanity.

The most common form of "*partial insanity*" is where the patient, though perfectly sane on general subjects, is nevertheless the victim of "*delusions*" on certain points (*y*). Delusions.

For a man may be capable of transacting business of an important kind, involving the exercise of considerable powers of intellect, and yet may be subject to delusions so as to be unfit to make a will.

This form of disease is commonly known by the name of *monomania*—a word not strictly applicable, as persons in this condition are often subject to delusions on more than one particular subject; but the now established principle of law is, that, if the delusions under which a testator labours are such that they could not reasonably have been supposed to have affected the disposition made by his will, the will is valid; and as the burden of proving capacity rests in all cases upon those who propound a testamentary paper, it is more especially so when it appears that the testator was subject to delusions. Monomania.

A fair example of a will intimately connected with a

v. *Graham* (1853), 8 Moo. P. C. 493; *Arbery* v. *Ashe* (1828), 1 Hagg. 214; *Le Breton* v. *Fletcher* (1830), 2 Hagg. 558; *Lowe* v. *Jolliffe* (1755), 1 W. Bl. 365; *Wrench* v. *Murray* (1842), 3 Curt. 623; *Young* v. *Dendy* (1867), L. R. 1 P. & D. 344; 36 L. J. P. 43; *Smith* v. *Tebbitt* (1867), L. R. 1 P. & D. 398; 36 L. J. P. 97; 16 L. T. 841.

(*x*) 6 Moo. P. C. 35.

(*y*) See on the subject of "Partial Insanity," Wms. on Exors. 10th ed. pp. 21—24, and the following cases:—*Dew* v. *Clark* (1827), 1 Add. 279; 3 Add. 79; 5 Russ. 163; 6 L. J. (O. S.) Ch. 186 *Greenwood's Case* (1825), 2 Add. 239; *White* v. *Wilson*, *supra*, note (*u*); *Fulleck* v. *Allinson*, *supra*, note (*u*); *Groom* v. *Thomas*, *supra*, note (*u*); *Fowlis* v. *Davidson*, *supra*, note (*u*); *Wheeler* v. *Alderson* (1831), 3 Hagg. 598; *Chambers* v. *Queen's Proctor*, *supra*, note (*u*); *Frere* v. *Peacocke*, *supra*, note (*u*); *Austen* v. *Graham*, *supra*, note (*u*); *Mudway* v. *Croft*, *supra*, note (*u*); *Prinsep* v. *Dyce Sombre*, *supra*, note (*s*).

Delusions, will made under influence of.

delusion to which a testator was subject, is to be found in the most recent case upon the point, *Smee* v. *Smee* (*z*), where the testator, a man of a capacity perhaps above the average in the ordinary affairs of life, laboured under the delusion that he was the son of his late Majesty George IV., and left a considerable amount of property to the Corporation of Brighton towards founding a public library in the Royal Pavilion, in which he could have had no especial interest, except that it was built by his imagined father, and was his favourite marine residence.

Eccentric acts and conduct.

But testamentary capacity is not disproved merely by evidence of eccentric acts and conduct (*a*).

Will made by person wholly or partially insane, when valid; judicial dicta as to.

But the whole question of unsoundness of mind was most fully treated of some years ago by the late Lord Chief Justice Cockburn, in delivering the unanimous decision of the Court of Queen's Bench in *Banks* v. *Goodfellow* (*b*), a case which was very fully commented on by the late Sir James Hannen, in his summing up to the jury in the subsequent case of *Boughton* v. *Knight* (*c*), from which the following is extracted:—"Now, I would draw your attention to a case which has been frequently adverted to in the course of this trial—the case of *Banks* v. *Goodfellow*, which was decided in the Court of Queen's Bench, when I had the honour of being a member of it. I was a party to the judgment, but the language is that of the present Lord Chief Justice (*the late Sir Alexander Cockburn*). As a party to it, I am bound by it in the sense in which I understand its words. . . . . It was a case in which a man who had been subject, before and

(*z*) (1880), 5 P. D. 84; 49 L. J. P. 8. See also *Hope* v. *Campbell*, (1899) A. C. 1.

(*a*) *Pilkington* v. *Gray*, (1899) A. C. 401; 68 L. J. P. C. 63.

(*b*) (1870), L. R. 5 Q. B. 549; 39 L. J. Q. B. 237; 22 L. T. 813.

(*c*) (1873), L. R. 3 P. & D. 64; 42 L. J. P. 25; 28 L. T. 562.

after making his will, to delusions, was not shown to be either under the influence of those delusions at the time, or, on the other hand, to be so free from them that if he had been asked questions about them he would not have manifested that they existed in his mind. But he made a will by which he left his property to his niece, who had lived with him for many years, and to whom he had always expressed an intention to leave his property, and to whom, in the ordinary sense of the word, it was his duty to leave the property, and of whom it was right he should take care on his death. It was left to the jury to say whether he made that will uninfluenced by the delusions he was shown to have had before and after, and the jury found that the will which I have described to you was made free from the influence of the delusions under which he suffered; and it was held that, under those circumstances, the jury finding the fact in that way, such finding could not be set aside.

Will, who may make.

Will of person wholly or partially insane, when valid; judicial dicta as to.

"I will not trouble you by reading the whole judgment, which, however, would well repay the trouble of reading it, by laymen as well as by professional men; but I will pick out passages to show you how carefully guarded against misapprehension the decision is. . . . . In one passage the Lord Chief Justice says: 'No doubt when the fact that a testator has been subject to any insane delusion is established, a will should be regarded with great distrust, and every presumption should, in the first instance, be made against it. Where insane delusion has once been shown to have existed, it may be difficult to say whether the mental disorder may not possibly have extended beyond the particular form or instance in which it has manifested itself. It may be equally difficult to say how far the delusion may not have influenced the testator in the particular disposal of his property. And the presumption against a will made under such circumstances becomes additionally strong where the will is, to use the term of the civilians, an inofficious one—that is to say, one in which

Will, who may make.

Will of person wholly or partially insane, when valid; judicial dicta as to.

natural affection and the claims of near relationship have been disregarded' (*d*).

"In an earlier passage the Lord Chief Justice lays down . . . . what is essential to the constitution of testamentary capacity. 'It is essential to the exercise of such a power' (of making a will) 'that a testator shall understand the nature of the act and its effects—shall understand the extent of the property of which he is disposing—shall be able to comprehend and appreciate the claims to which he ought to give effect, and, with a view to the latter object, that no disorder of the mind shall poison the affections, pervert his sense of right, or prevent the exercise of his natural faculties; that no insane delusion shall influence his will in disposing of his property, and bring about a disposal of it which, if the mind had been sound, would not have been made. Here, then, we have the measure of the degree of mental power which should be insisted on. If the human instincts and affections or the moral sense become perverted by mental disease—if insane suspicion or aversion take the place of natural affection—if reason and judgment are lost, and the mind becomes a prey to insane delusions calculated to interfere with and disturb its functions and to lead to a testamentary disposition due only to their baneful influence, in such a case it is obvious that the condition of testamentary power fails, and that a will made under such circumstances ought not to stand.' Gentlemen, I have no fear, when rightly understood, of that case being misapplied" (*e*).

(*d*) "By the Roman law testaments might be set aside as being *inofficiosa*, deficient in natural duty, if they totally passed by (without assigning a true and sufficient reason) any of the children of the testator, though, if the child had any legacy, however small, it was a proof the testator had not lost his memory or reason, which otherwise the law presumed." Wms. on Exors. 10th ed. p. 25.

(*e*) "Although in the case of a person who is sometimes sane and sometimes insane, if there be no direct proof of his state when he wrote his will, and there be in it a mixture of wisdom and folly,

Aged persons, drunkards, &c.

Persons who from old age have outlived their understandings, and those who have become temporarily incapable by their own act, as drunkards and the like, may be incapable of making a valid testament (*f*). "For a man may perhaps not be insane, and yet not equal to the important act of disposing of his property by will" (*g*).

Old age.

Extreme old age raises some doubt of capacity, but only so far as to excite the vigilance of the Court (*h*).

Insanity, temporary, as drunkenness and the like.

Intoxication is, in truth, temporary insanity, but as the disease in such a case is in itself of a temporary nature, the presumption of its continuance does not apply.

So, where a testator was proved to have been not properly a madman, but an habitual drunkard, who, under the excitement of liquor, acted in all respects very like a madman; on it being shown that at the time of making the will the testator was not under the influence of liquor, the will was supported (*i*).

Capacity doubtful.

Where the mental capacity of a testator is doubtful at the time of the execution of a testamentary document,

it is to be presumed that the same was made during the testator's phrenzy, even if there be but one word 'sounding to folly'; yet the Court of Probate will not at once reject an allegation propounding a will which even strongly 'sounds to folly,' when facts are pleaded showing that the deceased up to his death conducted himself in the ordinary concerns of life as a sane man." Wms. on Exors. 10th ed. p. 25.

(*f*) See Wms. on Exors. 10th ed. pp. 26—28.

(*g*) *Mountain* v. *Bennett* (1788), 1 Cox, 356.

(*h*) *Kindleside* v. *Harrison* (1815), 2 Phill. 461, 462. See further, on this point, *Cranmer, Ex parte* (1806), 12 Ves. 452; *Sherwood* v. *Saunderson* (1815), 19 Ves. 283; *Ridgway* v. *Darwin* (1802), 8 Ves. 66; *Bird* v. *Bird* (1830), 2 Hagg. 142; *Lewis* v. *Pead* (1789), 1 Ves. jun. 19; *Combes' Case* (1606), Moor. 759; 9 Co. 75 b; Vin. Abr. tit. Devise, A. 22; 4 Burn, E. L. 49; *Winchester* (*Marquis of*) *Case*, 6 Co. 23 a; 4 Burn, E. L. 49; *Herbert* v. *Lowns* (1525), 1 Ch. Rep. 24; Dyer, 27 a; *Ball* v. *Mannin* (1829), 3 Bligh, N. S. 1; *Marsh* v. *Tyrrell* (1827), 2 Hagg. 84; *Constable* v. *Tufnell* (1830), 4 Hagg. 465; *Harwood* v. *Baker* (1840), 3 Moo. P. C. 282; *Sefton* v. *Hopwood* (1858), 1 F. & F. 578; *Swinfen* v. *Swinfen* (1859), 1 F. & F. 584; *Osmond* v. *Fitzroy* (1731), 3 P. Wms. 129.

(*i*) See Wms. on Exors. 10th ed. p. 28.

Instructions from party interested.

there must be clear proof of instructions or of reading over, or other satisfactory evidence of some kind, that he knew and approved of the contents of the will (*k*); and it is always a most dangerous proceeding for a solicitor to take instructions from one of the parties interested without any communication with the testator himself.

Will made by person of sound mind, subsequently destroyed, wholly or partially, during insanity.

"If a will be executed by a testator of sound mind at the time of execution, and be afterwards wholly or partially defaced by him, while of unsound mind, such will is to be pronounced for as it existed in its integral state, that being ascertainable" (*l*).

Reports of lunacy visitors as to patient.

Reports of visitors in lunacy made under the Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 184—186, respecting the condition of any patient, are to be destroyed on the death of such patient. Therefore, in a case where such reports were actually in existence after the death of a patient, the Court held that they must be taken to have been destroyed at the time of her death, and that no order could be made for their production (*m*).

(*k*) *Billinghurst* v. *Vickers* (1810), 1 Phill. 191; *Barry* v. *Butlin* (1838), 2 Moo. P. C. 480; *Browning* v. *Budd* (1848), 6 Moo. P. C. 435.

(*l*) See Wms. on Exors. 10th ed. p. 28, citing *Scruby* v. *Fordham* (1823), 1 Add. 74; *Brand, In goods of* (1830), 3 Hagg. 754; *Harris* v. *Berrall* (1859), 1 S. & T. 153.

(*m*) *Roe* v. *Nix*, (1893) P. 55; 62 L. J. P. 36; 68 L. T. 26.

CHAPTER V.

WHO MAY MAKE A WILL—PERSONS INCAPABLE FROM WANT OF LIBERTY OR FREE WILL—PRISONERS—WILL OBTAINED BY FORCE—FRAUD—IMPORTUNITY—UNDUE INFLUENCE.

Will, who may make. Prisoners.

"Such persons as are intestable for want of liberty or free will are by the civil law of various kinds, as prisoners, captives, and the like. But the law of England does not make such persons absolutely intestable, but only leaves it to the discretion of the Court to judge upon the consideration of their particular circumstances of duress, whether or no such persons could be supposed to have *liberum animum testandi*" (*a*).

Actual force, will obtained by.

"If it should be demonstrated that actual force was used to compel the party to make the will, there can be no doubt that, although all the formalities required had been complied with, such a will could never stand" (*b*).

Fear, will made under influence of.

If the testament be made under the influence of fear it will be void. But it must be such a fear as might reasonably be supposed to affect an ordinarily reasonable man, such "as the fear of death, or of bodily hurt, or of imprisonment, or of loss of all or most part of one's goods, or the like: whereof no certain rule can be delivered, but it is left to the discretion of the judge, who ought not only to consider the quality of the threatenings, but also the persons, as well threatening as threatened; in the person

(*a*) Wms. on Exors. 10th ed. p. 29, citing Swinb. Pt. II. s. 8; Godolph. Pt. I. c. 9; 2 Black. Comm. 497.

(*b*) *Ibid.*, citing *Mountain* v. *Bennett* (1788), 1 Cox, 355, by Eyre, C. B.

threatened the sex, age, courage, pusillanimity, or the like" (*c*).

Fraud: Will obtained by.

"Fraud is no less detestable in law than open force. Therefore, if a testator be circumvented by fraud, the testament is of no more force than if it were made under the influence of fear" (*d*).

What amounts to.

What amount of deceit will amount to fraud is left to the discretion of the judge. "If part of a will has been obtained by fraud, probate, it should seem, ought to be refused as to that part and granted as to the rest" (*e*).

Must be specially pleaded.

Fraud must be specially pleaded, and cannot be raised under a plea of undue influence (*f*). False and fraudulent representations to an aged, infirm testator respecting the characters of individuals, made with a view to induce him to revoke bequests made in their favour, afford strong reasons for setting a will aside on the ground of fraud (*g*). And where there is no evidence of instructions by the deceased, and a will has been entirely prepared by a solicitor who takes almost the entire property, there is strong ground to suspect fraud and imposition (*h*).

Will made through beneficiary, &c.

It is the duty of any person, who expects that a will is about to be made in his favour, to see that the testator receives proper and independent advice; and he should take care that the testimony called in support of the will should not be that of himself alone, but that it should be independent and impartial (*i*).

(*c*) Wms. on Exors. 10th ed. p. 30, citing Swinb. Pt. VII. s. 2, pl. 7; *Nelson* v. *Oldfield* (1705), 2 Vern. 76.

(*d*) *Ibid.* p. 30, citing Swinb. Pt. VII. s. 3, pl. 1; and in note (*g*) on same page: "Fraud and imposition upon weakness is a sufficient ground to set aside a will of real, much more of personal estate, though such weakness is not sufficient to ground a commission of lunacy": by Lord Hardwicke, in *Donegal* (*Lord's*) *Case* (1751), 2 Ves. sen. 408.

(*e*) *Ibid.* p. 30, citing *Allen* v. *McPherson* (1847), 1 H. of L. 191; *Trimlestown* v. *D'Alton* (1827), 1 Dow. N. S. 85.

(*f*) *White* v. *White* (1862), 2 S. & T. 504; 31 L. J. P. 215.

(*g*) *Allen* v. *McPherson*, *supra*.

(*h*) *Ingram* v. *Wyatt* (1828), 1 Hagg. 384.

(*i*) *Parker* v. *Duncan* (1890), 62 L. T. 642, per Sir James Hannen.

Will propounded by beneficiary.

In every case where a will has been procured and is propounded by a beneficiary who takes a large benefit thereunder, the Court should approach its consideration with suspicion, even though fraud be not pleaded (*k*).

Plea of fraud allowed to be added after cross-examination.

Where the burden of proof was on the defendant, and the plaintiff had pleaded undue influence only, the Court, after the defendant had been cross-examined and his case was closed, allowed the plaintiff to amend her pleadings by adding a plea that the codicil in dispute had been obtained by the fraudulent misrepresentations of the defendant, the evidence in support of such plea to be confined to matters arising upon the defendant's cross-examination (*l*).

Importunity, will obtained by.

If a man (said Rolle, C. J., at a trial at bar) "makes a will in his sickness by the over-importunity of his wife, to the end he may be quiet, this shall be said to be a will made by constraint, and shall not be a good will" (*m*). But this importunity must be in such a degree as to destroy free agency, such as the testator is too weak to resist (*n*).

Will made by interrogatories.

A will made by interrogatories is valid; but undoubtedly when a will is so made the Court must be more on its guard as to importunity and capacity (*o*).

Undue influence, will obtained by.

But there is another and most important class of cases, in which not physical but moral force has been made use of by persons about the testator, to induce him to make a testamentary disposition in accordance with their wishes,

(*k*) See *Barry* v. *Butlin* (1838), 2 Moo. P. C. 480; *Fulton* v. *Andrew* (1875), L. R. 7 H. L. 465; 44 L. J. P. 17; 32 L. T. 209; *Goodacre* v. *Smith* (1867), L. R. 1 P. & D. 359; 36 L. J. P. 43; 15 L. T. 511; *Brown* v. *Fisher* (1891), 63 L. T. 465.

(*l*) *Riding* v. *Hawkins* (1889), 14 P. D. 56; 58 L. J. P. 48; 60 L. T. 869.

(*m*) Wms. on Exors. 10th ed. p. 31, citing *Hacker* v. *Newborn* (1650), Styles, 427; *Moneypenny* v. *Brown*, 8 Vin. Abr. 167, tit. Devise (Z 2), pl. 7; *Lamkin* v. *Babb* (1752), 1 Cas. temp. Lee, 1.

(*n*) *Kindleside* v. *Harrison* (1815), 2 Phill. 551, 552, per Sir John Nicholl.

(*o*) *Green* v. *Skipworth* (1809), 1 Phill. 58.

Undue influence: Will obtained by.

and these cases are commonly classed under the head of "*Wills obtained by undue influence.*"

Must amount to coercion.

"But the influence to vitiate an act must amount to force and coercion, destroying free agency. It must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act. Further, there must be proof that the act was obtained by this coercion—by importunity which could not be resisted; that it was done merely for the sake of peace; so that the motive was tantamount to force and fear" (*p*).

Question of fact.

Whether that amount of undue influence which will come within the description above cited has or has not been exercised, is a question entirely of fact; but in order to set aside a testamentary paper executed by a person of sound mind under its influence, it must be shown that the circumstances under which such testamentary paper was executed are inconsistent with any hypothesis except that of undue influence (*q*).

Evidence of what is sufficient.

A pressure of whatever character, if so exerted as to overpower the volition without convincing the judgment of a testator, will constitute undue influence (*r*).

A great change of testamentary dispositions long adhered to, especially where the person in whose favour the change is made possesses great influence and authority, and the testator's capacity is doubtful at the time of the change, and, generally, bequests made in favour of persons

(*p*) Wms. on Exors. 10th ed. p. 32, citing *Williams* v. *Goude* (1831), 1 Hagg. 581; *Constable* v. *Tufnell* (1830), 4 Hagg. 485; *Sefton* v. *Hopwood* (1858), 1 F. & F. 578; *Lovett* v. *Lovett* (1858), *Ibid.* 581; *Hall* v. *Hall* (1868), L. R. 1 P. & D. 481; 37 L. J. P. 40; 18 L. T. 152. And as to undue influence depending on religious feelings, *Norton* v. *Relly* (1763), 2 Eden, 286; *Huguenin* v. *Basely* (1808), 14 Ves. 273; *Parfitt* v. *Lawless* (1872), L. R. 2 P. & D. 462; 41 L. J. P. 68; 27 L. T. 215.

(*q*) *Boyse* v. *Rossborough* (1857), 6 H. of L. Cas. 2; 26 L. J. Ch. 256.

(*r*) *Hall* v. *Hall*, *supra*.

immediately about them, and possessing great influence over them, by weak and dying persons (particularly if such bequests are contrary to natural equity, and other members of the family and friends have been kept away from the testators), are circumstances suggestive of undue influence, which should arouse the suspicion of the Court (*s*), but they do not in any way alter the burden of proof which invariably lies on the party alleging undue influence.

Undue influence: Will obtained by.

Evidence of what is sufficient: *onus probandi*.

"In the case of gifts or other transactions *inter vivos*, it is considered by Courts of Equity that the natural influence which relations such as those of solicitor and client, guardian and ward, physician and patient, tutor and pupil, involve, exerted by those who possess it to attain a benefit for themselves, is an undue influence. Gifts or contracts brought about by it are therefore set aside, unless the party benefited by it can show affirmatively that the other party to the transaction was placed in such a position as would enable him to form an absolutely free and unfettered judgment (*t*).

Persons in fiduciary relation; distinction between gifts *inter vivos* and gifts by will.

"The law regarding wills is very different from this, and the mere proof of the existence of such a relation is no evidence of undue influence, and the party relying thereon must give some evidence of coercion or dominion exercised over the testator against his will, or of coercion so strong that it could not be resisted (*u*).

"To be undue influence in the eye of the law, there must be—to sum it up in a word—coercion. It is only when the will of the person who becomes a testator is coerced into doing that which he or she does not desire to do that it is undue influence.

Must be coercion.

(*s*) See *Marsh* v. *Tyrell* (1827), 2 Hagg. 84; *Mynn* v. *Robinson* (1830), 2 Hagg. 179; *Harwood* v. *Baker* (1840), 3 Moo. P. C. 282; *Cockraft* v. *Rawles* (1845), 4 Notes of Cas. 237.

(*t*) *Archer* v. *Hudson* (1846), 7 Beav. 557; 15 L. J. Ch. 211.

(*u*) Wms. on Exors. 10th ed. pp. 35, 36; *Parfitt* v. *Lawless* (1872), L. R. 2 P. & D. 462; 41 L. J. P. 68; 27 L. T. 215; *Ashwell* v. *Lomi*, tried in the Prerogative Court of Canterbury, but first reported L. R. 2 P. & D. 477.

Undue influence: Coercion amounting to. May be of various kinds.

"The coercion may, of course, be of different kinds: it may be in the grossest form, such as actual confinement or violence, or a person in the last days or hours of life may have become so weak and feeble, that a very little pressure will be sufficient to bring about the desired result, and it may even be that the mere talking to him at that stage of illness, and pressing something upon him may so fatigue the brain that the sick person may be induced, for quietness sake, to do anything. This would equally be coercion, though not actual violence" (*x*).

Chairman of board of guardians and workhouse inmate.

In *Parker* v. *Duncan* (*y*), the plaintiff who propounded an alleged last will, was chairman of the board of guardians in whose workhouse infirmary the testator was an inmate at the time of its execution, and in which she died. It appeared that the plaintiff procured from a solicitor a form of will filled up in pencil, but declined to allow the solicitor to see the deceased. The plaintiff then proceeded to the infirmary accompanied by a friend of his own, and the testatrix, in their presence and that of a nurse, put her mark to the form of will the plaintiff had brought with him. The Court held that these facts were sufficient to support a plea of undue influence.

Wills of seamen.

"Persons in the sea service are frequently under the pressure of urgent wants, and to procure an immediate supply of those wants (such as an outfit, or the like) they will, without thought, comply with almost any condition proposed to them. These temporary necessities have been considered to operate on them as a sort of duress on the part of those who are to furnish the supply: and it is partly on this consideration that the policy of the law has been extended to guard the testamentary acts of this class of persons" (*z*).

(*x*) Per Sir James Hannen, *Wingrove* v. *Wingrove* (1886), 11 P. D. 81; 55 L. J. P. 7.

(*y*) (1890), 62 L. T. 642.

(*z*) Wms. on Exors. 10th ed. p. 36; *Zacharias* v. *Collis* (1820), 3 Phill. 177.

By 28 & 29 Vict. c. 72, s. 4, "a will made after the commencement of this Act by any seaman or marine (*a*) shall not be valid for any purpose if it is written on paper, parchment or instrument with a power of attorney." Made on the same instrument with a warrant of attorney invalid.

This statute superseded 11 Geo. 4 & 1 Will. 4, and the earlier statutes of 9 & 10 Will. 3, c. 41, s. 6 and 55 Geo. 3, c. 64, s. 4.

Shortly after the passing of the statute of Will. III. it was decided, in the case of *Craig* v. *Lester* (*b*), that a will made by a seaman as a security for a debt was void, even though executed on a different instrument from a power of attorney, and this case was "followed by numerous others in the Prerogative Court, fully establishing that wills made by mariners as securities for debts are void. Seaman and agent.

"But neither the statute nor these decisions must be understood as making the relation of agent and seaman, or the circumstance of the seaman being indebted to his agent, an absolute defeasance to the will, so that it could, in no case, be valid.

"The proper result to be deduced is, that when the relation of agent and seaman exists, there must be clear proof, not only of the subscription of the deceased to the instrument, but also of his knowledge of its nature and effect: that, wherever it is executed merely as a security for a debt, it shall not operate as a testamentary disposition of the whole property; but, on the other hand, though there may be a debt, yet if there be satisfactory evidence that the testator intended to dispose of his property by will, the instrument shall be valid" (*c*). Result of cases as to wills of seamen.

As regards merchant seamen the Merchant Shipping Act, 1894, s. 177, sub-s. 1, provides as follows:— Merchant seamen.

"(1) Where a deceased seaman or apprentice has left a

(*a*) *I.e.*, any person belonging to H.M. naval or marine force "exclusive of commissioned, warrant and subordinate officers, and assistant engineers, and of Kroomen."

(*b*) (1714), 3 Phill. 189.

(*c*) Wms. on Exors. 10th ed. p. 36, citing *Zacharias* v. *Collis* (1820), 3 Phill. 202, 203, 204; *Deardsley* v. *Fleming* (1756), 2 Cas. temp. Lee, 98.

Merchant Shipping Act, 1894, s. 177, sub-ss. 1, 2.

will, the Board of Trade may refuse to pay or deliver the above mentioned residue (*that is, the seaman's property after deducting expenses*) :

"(a) If the will was made on board ship, to any person claiming under the will, unless the will is in writing and is signed or acknowledged by the testator in the presence of, and is attested by the master or first or only mate of the ship ; and

"(b) if the will was not made on board ship, to any person claiming under the will, and not being related to the testator by blood or marriage, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, two witnesses, one of whom is a superintendent, or is a minister of religion officiating in the place in which the will is made, or where there are no such persons, a justice, British Consular Officer, or an Officer of Customs.

"(2) Whenever the Board of Trade refuse under this section to pay or deliver the residue to a person claiming under a will the residue shall be dealt with as if no will had been made."

Sects. 178, 742.

Sect. 178 lays down certain rules to be observed by the Board of Trade with respect to creditors of deceased seamen and apprentices, and by sect. 742 the word "*seaman*" includes every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship (*d*).

(*d*) Wills of "mariners or seamen being at sea" are excepted from the operation of the Wills Act (1 Vict. c. 26) by sect. 11 of that statute.

CHAPTER VI.

WHO MAY MAKE A WILL—PERSONS INCAPABLE BY OPERATION OF LAW—MARRIED WOMEN—TRAITORS AND FELONS—OUTLAWS—PERSONS EXCOMMUNICATE—PERSONS GUILTY OF CRIMES SHORT OF FELONY.

Will, who may make. Married women.

THE power of married women to dispose of real and personal estate is now regulated by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), but this statute applies to no will made before January 1st, 1883 (*a*).

34 & 35 Hen. 8, c. 5, s. 14.

By 34 & 35 Hen. 8, c. 5, s. 14, all wills or testaments made of any manors, lands, tenements, or other hereditaments, by any woman covert, shall not be taken to be good or effectual in law.

1 Vict. c. 26, s. 8.

By the Wills Act, 1 Vict. c. 26, s. 8, no will made by any married woman shall be valid, except such as might have been made by a married woman before the passing of that Act.

"But this section does not exclude the wills of married women from the operation of the 24th section as to a will speaking as to the real and personal estate comprised in it, as if executed immediately before the testator's death. . . . The 27th section, as to a general devise or bequest being an execution of a general power, also applies to wills of married women" (*b*).

(*a*) See on this subject generally, Wms. on Exors. 10th ed. pp. 38—50.

(*b*) Wms. on Exors. 10th ed. pp. 39, 40, citing *Thomas* v. *Jones* (1863), 1 De G. & Sm. 63; 32 L. J. Ch. 139; *Noble* v. *Phelps* (1871), L. R. 2 P. & D. 276; 40 L. J. P. 60; 25 L. T. 65. See the Wills Act, *post*, Appendix.

Married women. Will made before Jan. 1, 1883. Will made during husband's lifetime previous to Married Women's Property Act, 1882. Women married before Jan. 1, 1883.

But at the same time it has been held that this section does not speak retrospectively, so as to operate to give effect to her will made during her husband's lifetime, when she had no power to make it, unless such will has been re-executed after his death (*c*); and this decision has since been held to be unaffected by the passing of the Married Women's Property Act, 1882 (*d*).

Therefore, a woman married before January 1st, 1883, cannot, without the consent of her husband, make a will disposing of any real or personal property her title to which accrued before the passing of the Married Women's Property Act, 1882, except property given or settled to her separate use or to the execution of a power of appointment, for all her goods and chattels are the property of her husband (*e*).

May bequeath property acquired by her as executrix.

A married woman might, however, even before the Act of 1882, dispose by will of property acquired by her in the character of executrix; but, "the effect of such an instrument is merely to pass, by a pure right of representation, to the testator or prior owner, such of his personal assets as remained outstanding, but no beneficial interest which the wife may have in any part of them could have been disposed of by her will" (*f*).

Made with assent of husband.

A husband may assent to his wife making her will, but such assent is only a waiver of his rights as her adminis-

(*c*) *Willock* v. *Noble* (1875), L. R. 7 H. L. 580; 44 L. J. Ch. 345; 32 L. T. 419.

(*d*) *Price, Re* (1885), 28 Ch. D. 709; 54 L. J. Ch. 509; 52 L. T. 430.

(*e*) *Ognell* (*Andrew's*) *Case*, 4 Co. 51 b; 2 Bl. Com. 498; *Steadman* v. *Powell* (1822), 1 Add. 58; *Bransby* v. *Haines* (1753), 1 Cas. temp. Lee, 120; *Tucker* v. *Inman* (1843), 4 M. & Gr. 1076; 12 L. J. C. P. 21. As to property coming to her after the Act of 1882, see *post*, pp. 47, 48.

(*f*) Wms. on Exors. 10th ed. p. 40, citing *Scammel* v. *Wilkinson* (1802), 2 East, 552; *Tucker* v. *Inman*, *supra*; *Hodsden* v. *Lloyd* (1789), 2 Bro. C. C. 534, 543. And see further as to right of husband to oppose grant of probate to wife where she has been appointed sole executrix, *Clerke* v. *Clerke* (1881), 6 P. D. 103; 50 L. J. P. 69.

trator (*g*), and can only give validity to the will in the event of his being the survivor (*h*).

Will of married woman made before January 1, 1883.

But a general assent of the husband is not sufficient; he must assent to the particular will, and his consent should be given when it is proved (*i*). He may revoke his consent during her life or at any time before probate, though if he once act on the will he cannot revoke his consent, and where there is an express agreement slight proof of consent will suffice (*k*).

Assent may be revoked before probate.

A will was made by a married woman who appointed her husband one of her executors. He assented to the will, and after her death expressed his intention to take probate, but died before doing so. Upon this the Court held that he had assented to the probate (*l*).

Assent of husband, what amounts to.

The power of a married woman to dispose of her estate by will with the assent of her husband applied formerly only to her personal estate. Her primary incapacity to dispose of realty arose, not from her husband's interest in her real estate, but, as has been seen, from the statutory provisions of 34 & 35 Hen. 8, c. 5. Therefore it was held, that the mere renunciation by an intended husband of his

Disposing of real estate.

Renunciation by husband.

(*g*) *Smith, In goods of* (1858), 1 S. & T. 508; 27 L. J. P. 39; *Noble* v. *Willock* (1873), L. R. 8 Ch. 778; 42 L. J. Ch. 681; 29 L. T. 194. See also *Re Atkinson*, (1899) 2 Ch. 1, 4, 5; 68 L. J. Ch. 404; 80 L. T. 505.

(*h*) See Wms. on Exors. 10th ed. p. 42, citing *Stevens* v. *Bagwell* (1808), 15 Ves. 156; *Price* v. *Parker* (1848), 16 Sim. 198; 17 L. J. Ch. 398; *Smith* (*Rebecca*), *In goods of* (1858), 1 S. & T. 125, 127; 27 L. J. P. 39; *Noble* v. *Phelps* (1871), L. R. 2 P. & D. 276; 40 L. J. P. 60; 25 L. T. 65; *Willock* v. *Noble* (1875), L. R. 7 H. L. 580; 44 L. J. Ch. 345; 32 L. T. 419; *Scammel* v. *Wilkinson, supra;* Roper on Husb. and Wife, 2nd ed. pp. 170—189; Swinb. Pt. II. s. 9, pl. 5.

(*i*) *Willock* v. *Noble, supra; Rex* v. *Bettesworth* (1740), 2 Stra. 891; *Henley* v. *Phillips* (1740), 2 Atk. 47.

(*k*) See Wms. on Exors. 10th ed. pp. 40, 41. See also *Chappell* v. *Carlton* (1887), 56 L. J. P. 73; 57 L. T. 496.

(*l*) *Cooper, In goods of* (1881), 6 P. D. 34; 50 L. J. P. 65; 80 L. T. 632. See also *Brook* v. *Turner* (1675), 2 Mod. 170; *Maas* v. *Sheffield* (1845), 4 Notes of Cas. 350; *S. C.*, 1 Robert. 364.

Will of married woman made before January 1, 1883.

marital rights in his wife's real estate was not sufficient to clothe her with a testamentary power, or to constitute a valid declaration of trust of the fee (*m*).

Made under express agreement.

"Concerning wills of married women made under a power, or in pursuance of an agreement amounting to a power, it is thought advisable to refer the reader to the treatises on powers, and not to enlarge this work by a discussion of the subject. It may, however, be remarked that a testamentary appointment of such a nature by a married woman cannot be made available without probate" (*n*).

Property settled or given to sole and separate use.

Even before the Married Women's Property Act, where property was actually given or settled, or agreed to be given or settled, to the sole and separate use of a wife, she took it with all its privileges and incidents, one of which was the power of disposing of it by will. And this rule prevailed whether the property were in possession or reversion, vested or contingent, whether it were given to trustees for her separate use, or to the wife herself. And where she had power over the principal it extended also to its produce and accretions (*o*).

Produce and accretions of separate estate.

Before the passing of the Land Transfer Act, 1897

(*m*) *Dye* v. *Dye* (1884), 13 Q.B.D. 147; 53 L. J. Q. B. 442; 51 L. T. 145.

(*n*) Wms. on Exors. 10th ed. pp. 42, 43, citing *Ross* v. *Ewer* (1744), 3 Atk. 160; *Stone* v. *Forsyth* (1780), Doug. 708; *Tucker* v. *Inman* (1843), 4 M. & Gr. 1049, 1077; Sugden on Powers, 4th ed. p. 332.

(*o*) See *Fettiplace* v. *Gorges* (1789), 1 Ves. jun. 46; 3 Bro. C. C. 8; *Peacock* v. *Monk* (1750), 2 Ves. sen. 190; *Rich* v. *Cockell* (1802), 9 Ves. 369; *Sturgis* v. *Corp* (1806), 13 Ves. 190; *Lechmere* v. *Brotheridge* (1863), 32 Beav. 35; 8 L. T. 751; *Forse and Hembling's Case*, 4 Co. 61 b; *Haddon* v. *Fladgate* (1858), 1 S. & T. 48; 27 L. J. P. 21; *Herbert* v. *Herbert* (1670), Prec. Ch. 44; 1 Eq. Ca. Abr. 66, 68; *Moore* v. *Barber* (1865), 34 L. J. Ch. 667; 12 L. T. 664; *Braham* v. *Burchell* (1826), 2 Add. 263; *Tappenden* v. *Walsh* (1811), 1 Phill. 352; *Smith, In goods of* (1858), 1 S. & T. 125; *Crofts, In goods of* (1870), L. R. 2 P. & D. 18; 21 L. T. 596; *Hughes* v. *Jones* (1863), 32 L. J. Ch. 487; *Finlay* v. *Darling*, (1897) 1 Ch. 719; 66 L. J. Ch. 348; 76 L. T. 461.

(60 & 61 Vict. c. 65), a will of a married woman made during coverture under a power, and disposing of real estate only, was not entitled to probate even though there was an appointment of executors (*p*).

Will of married woman made before January 1, 1883.

Where, however, a married woman having a power of appointment executed the power in favour of herself, and afterwards made a will by which she appointed an executor, and directed him to sell a portion of her estate for the purpose (among other things) of paying legacies and erecting a memorial window, the Court held that as she possessed the property as her separate estate, and had appointed an executor, and directed him to pay legacies, &c., and as arrears of rent were due at the time, and such arrears of rent formed part of her personal estate, the will was entitled to probate (*q*).

Made under power.

Probate of the will of a married woman made under a power was always granted to the executor, without the husband's consent, the probate being limited to the property comprised in such power (*r*). For, in such a case, the executors merely took under the power which she was authorized to exercise by making a will as to the particular property, and consequently there was an intestacy as to property not disposed of by the power (*s*).

Probate to executor of will made under power, without husband's consent.

At one time the Court of Probate merely granted probate of a will of a married woman purporting to be made by virtue of a power, leaving it to a competent Court of

(*p*) *Tomlinson, In goods of* (1881), 6 P. D. 209; 50 L. J. P. 74; 46 L. T. 484; *Price, In goods of* (1887), 12 P. D. 137; 56 L. J. P. 72; 57 L. T. 497. See also *O'Dwyer* v. *Geare* (1860), 1 S. & T. 465; 29 L. J. P. 47; 1 L. T. 242.

(*q*) *Brownrigg* v. *Pike* (1882), 7 P. D. 61; 51 L. J. P. 29; 46 L. T. 821. And see *Hornbuckle, In goods of* (1890), 15 P. D. 149; 59 L. J. P. 78; 63 L. T. 464; *Cubbon, In goods of* (1886), 11 P. D. 169; 55 L. J. P. 77; 57 L. T. 87; *Re Lambert's Estate* (1888), 39 C. D. 626; 57 L. J. Ch. 927; 59 L. T. 429.

(*r*) See Wms. on Exors. 10th ed. p. 43.

(*s*) See *Ibid.* p. 46, citing *Tugman* v. *Hopkins* (1842), 4 M. & Gr. 389; *O'Dwyer* v. *Geare, supra.*

Will of married woman made before January 1, 1883.

construction to decide whether the testamentary paper is a due execution of or operative under the power (*t*).

Functions of Probate Division as to construction of power.

Now, however, by virtue of the Judicature Acts, the Probate Division, as one of the Divisions of the High Court, is itself a Court of construction. "Thus, in the present day, it would seem that in a case of the will of a married woman made under a power it would not only be competent to, but also incumbent upon, the Probate Division, if the Court had all persons interested before it, to decide the question, not only whether there was a power, but whether it was well executed" (*u*).

Re-execution after husband's death. 1 Vict. c. 26, s. 22.

A married woman who survived her husband might render a will made by her, either previous to her marriage or during coverture, effectual by re-execution or by a codicil, showing an intention to revive, as provided by the 22nd section of the Wills Act.

Protection order.

Even before the passing of the Married Women's Property Acts, by sect. 21 of the Matrimonial Causes Act, 1857 (*x*), "a wife who has obtained a protection order by reason of her husband having deserted her, shall, during the continuance thereof, be and be deemed to have been during such desertion of her in like position in all respects with regard to her property as she would be if she had

Judicial separation.

obtained a decree of judicial separation" (*y*). And the position of a woman who has obtained a decree of judicial separation, with regard to property acquired by her from the date of the sentence, is, that such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead (*z*).

(*t*) See Wms. on Exors. 10th ed. p. 44, citing *Barnes* v. *Vincent* (1846), 4 Notes of Cas. Suppl. 21; 5 Moo. P. C. 201.

(*u*) Wms. on Exors. 10th ed. p. 45. See *Tharp, In goods of* (1878), 3 P. D. 76; 38 L. T. 857.

(*x*) 20 & 21 Vict. c. 85.

(*y*) See Browne and Powles on Divorce, 7th ed. Chap. X.

(*z*) 20 & 21 Vict. c. 85, s. 25. See *Worman, In goods of* (1860), 1 S. & T. 513; 29 L. J. P. 164;

Will of married woman made before January 1, 1883. Valid by law of domicil.

And where a married woman was a native of Spain and died domiciled there, and it appeared upon affidavit that, by the law of Spain, she had power to bequeath property brought to her husband by her upon their marriage, probate was granted of her will (*a*).

Queen Consort.

The Queen Consort was always an exception to the general rule as to married women; for she could dispose of her chattels without the consent of her lord (*b*).

Husband banished by Act of Parliament.

"A woman whose husband is banished by Act of Parliament may make a will and act in every respect as a *feme sole*" (*c*).

Wife of felon.

A married woman whose husband is a convict may make a will disposing of property acquired by her, after his conviction and until the expiration of his sentence (*d*).

The following are the sections of the Married Women's Property Act, 1882 (*e*), bearing on the testamentary powers of married women:—

Sect. 1, sub-sect. 1. Married woman to be capable of holding property and contracting as a *feme sole*.

By sect. 1, sub-sect. 1—"A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee."

Sect. 2. Property of a woman married after the Act to be held by her as a *feme sole*.

By sect. 2—"Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages,

Faraday, In goods of (1862), 2 S. & T. 369; 31 L. J. P. 7.

(*a*) *Maraver, In goods of* (1828), 1 Hagg. 498. See also *Brown Séquard* v. *Brown Séquard* (1894), 70 L. T. 811.

(*b*) Wms. on Exors. 10th ed. p. 50.

(*c*) *Ibid.*, citing *Portland* v. *Prodgers* (1705), 2 Vern. 385; *Compton* v. *Collinson* (1788), 2 Bro. C. C. 385.

(*d*) *Martin, In goods of* (1853), 2 Robert. 405; *Coward, In goods of* (1865), 11 Jur. N. S. 569; *S.C.*, 34 L. J. P. 120.

(*e*) 45 & 46 Vict. c. 75.

Will of married woman made since January 1, 1883.

earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill."

Sect. 4. Execution of general power.

By sect. 4—"The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act."

Sect. 5. Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.

By sect. 5—"Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act (*f*), including any wages, earnings, money, and property so gained or acquired by her as aforesaid."

Sect. 23. Legal representative of married woman.

By sect. 23—"For the purposes of this Act the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living."

Felon.

By 33 & 34 Vict. c. 23, forfeiture for treason and felony has been abolished, and it would seem to follow that traitors and felons are no longer incapacitated from making wills.

Outlaw.

Outlaws are incapable of making a will as long as their outlawry subsists, for their goods and chattels are forfeited during that time (*g*).

(*f*) Property, the title to which, whether vested or contingent, in reversion or remainder, is acquired before the commencement of the Act, does not come within this section though it falls into possession after the Act: *Reid* v. *Reid* (1886), 33 C. D. 402; 65 L. J. Ch. 756; 55 L. T. 153; *Cuno, Re* (1890), 43 C. D. 12; 62 L. T. 15.

(*g*) See, on the subject of persons incapable from their criminal conduct of disposing of their property by will, Wms. on Exors. 10th ed. pp. 50—52.

CHAPTER VII.

OF HOW A WILL MAY BE EXECUTED (*a*).

"BEFORE the passing of the Wills Act (1 Vict. c. 26), no solemnities of any kind were necessary for the making of a will of personal estate. The fifth section of the Statute of Frauds which required the formalities of signature and attestation by three or four witnesses for a devise of land, did not extend to wills of personal property. The nineteenth section of the Statute of Frauds made it necessary that wills of personal estate should, generally speaking, be reduced into *writing* in the testator's lifetime; inasmuch as it was thereby enacted that no nuncupative will (where the estate thereby bequeathed exceeded the value of 30*l.*) should be good, except under certain circumstances . . . . But no other formality whatever was necessary to give wills of personal estate effect and operation" (*b*).

Wills before the passing of Wills Act, 1 Vict. c. 26.

All wills made after the 31st of December, 1837—with the exception of the wills of soldiers on active service and sailors at sea (*c*)—must have been, and must still be, made and executed in accordance with the provisions of sect. 9 of the Wills Act (1 Vict. c. 26), which provides "that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned;" that is to say, "it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the

Wills since passing of Wills Act, 1 Vict. c. 26, s. 9.

(*a*) See, on this subject generally, Wms. on Exors. 10th ed. pp. 53—80.

(*b*) Wms. on Exors. 10th ed. p. 53.

(*c*) These are excepted from the operation of the Act by sect. 11. See *post*.

Execution.

testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

1 Vict. c. 26, s. 10.

By section 10, "No appointment made by will, in exercise of any power, shall be valid unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will notwithstanding it shall have been expressly required that a will made in exercise of such power, should be executed with some additional or other form of execution or solemnity."

Locke King's Act, 15 Vict. c. 24, s. 1.

The 9th section was amended by 15 Vict. c. 24, s. 1, known as Locke King's Act. "Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment as explained by this Act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the *testimonium* clause or of the clause of attestation, or shall follow, or be after, or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names, or one of the names, of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will shall be written above the

"At or after, or following, or under, or beside, or opposite to," &c.

signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made."

Locke King's Act, 15 Vict. c. 24, s. 1.

The signature of a competent testator (whether educated or illiterate) is sufficient if it be made by affixing his mark or by stamping his name (*d*), or, if his hand be guided, either to make his mark or sign his name, as the case may be (*e*).

Testator's signature. By mark.

Even where the maiden name of the testatrix, who had been described throughout the will by her married name, was by mistake affixed to her mark (*f*), and also in a case where the testator was wrongly described throughout the will, but correctly described opposite his mark (*g*), the Court held that the documents were duly executed.

Where the signatures of the testator and witnesses appeared on a piece of paper, upon which no dispositive part of the will was written, but which was attached by a piece of string to the paper on which the will was written, just opposite to the termination of the writing, the Court, being satisfied that the papers were in the same state as

Signature of testator and witnesses on separate piece of paper affixed to will.

(*d*) *Jenkins* v. *Gaisford* (1862), 3 S. & T. 93. As to strictness being required in the case of a will executed by a marksman, see the opinion of the Judicial Committee of the Privy Council in *Donnelly* v. *Broughton*, (1891) A. C. 435; 60 L. J. P. C. 48; 65 L. T. 558.

(*e*) *Wilson* v. *Beddard* (1841), 12 Sim. 28; 10 L. J. Ch. 305.

(*f*) *Clarke, In goods of* (1858), 1 S. & T. 22; 27 L. J. P. 72.

(*g*) *Douce, In goods of* (1862), 2 S. & T. 593; 31 L. J. P. 172; 6 L. T. 789. See further as to signature of testator by mark, *Bryce, In goods of* (1840), 2 Curt. 325; *Glover, In goods of* (1846), 5 Notes of Cas. 553; *Redding, In goods of* (1852), 2 Robert. 339.

Signature for the testator by "some other person in his presence and by his direction."

when the witnesses signed them, held that the will was duly executed (*h*).

Where the name of the testator is signed by a third party at his request, as permitted by the statute, Sir H. J. Fust held, contrary to the opinion of Lord St. Leonards (*i*), that this might be done by one of the attesting witnesses (*k*); also that it was sufficient if the person signing signed his own name instead of that of the testator (*l*).

Position of testator's signature within 1 Vict. c. 26, s. 9; 15 Vict. c. 24, s. 1.

In considering the question of whether the signature of the testator is in a proper position within the meaning of the 9th section of the Wills Act and the 1st section of the Amending Act, it must be borne in mind that the Court must in every case be satisfied by evidence, or by reasonable inference, (1) That the testator duly wrote his name either with his own hand, or vicariously, as permitted by the Act, (2) That his name was on the will before the attesting witnesses wrote theirs.

"Foot or end."

The 9th section of the Wills Act merely enacts that the will shall be signed "*at the foot or end thereof*" without further words of explanation. Sir H. J. Fust, after at first putting a very liberal construction on this part of the Act, subsequently, with the concurrence of the Judicial Committee of the Privy Council, felt it necessary to take a more rigid view, on the ground that these words were intended to prevent any addition being made to the will after the testator had executed it, and accordingly probate was refused in a number of cases, and the intention of a number of testators defeated (*m*).

(*h*) *Horsford, In goods of* (1875), L. R. 3 P. & D. 211; 44 L. J. P. 9; 31 L. T. 553. See also *Gausden, In goods of* (1862), 2 S. & T. 362; 31 L. J. P. 53; 5 L. T. 767, where the piece of paper was pasted on the will; *Cook* v. *Lambert* (1863), 3 S. & T. 46; 32 L. J. P. 93; 9 L. T. 211, where it was affixed by wafers.

(*i*) Sugden's Essay on the Law of Wills, p. 38.

(*k*) *Bailey, In goods of* (1836), 1 Curt. 914; *Smith* v. *Harris* (1846), 1 Robert. 262.

(*l*) *Clark, In goods of* (1840), 2 Curt. 329. And see Wms. on Exors. 10th ed. 61, 62.

(*m*) See Wms. on Exors. 10th ed. pp. 56, 57.

Signature of testator. Sufficient as to position, within 15 Vict. c. 24, s. 1.

This led to the passing of the 15 Vict. c. 24, by which, as we have already seen, the words "foot or end" are sufficiently explained and enlarged as to include nearly every signature intended to give effect to a will, with the proviso that it is not to give effect to any dispositive part of such will, written after it was signed.

Position of testator's signature.

In the following cases the Court held that the wills were properly signed as to the position of the signature within the meaning of 15 Vict. c. 24, s. 1.

Wills held to be properly signed.

Where the testator's signature was written partly across the last line but one of the will and entirely above the last line, with the exception of one letter which touched the last line (*n*), and even though it occupied a place literally written above a dispositive portion of the will, it being clear that such dispositive portion was there before the will was signed (*o*); where the signature of the testator appeared below that of the attesting witnesses (*p*), and where the will was in the testator's handwriting and his name formed the last words of the concluding clause (*q*).

The same was held where the signature of the testator was on the fourth page of a sheet of paper, the will concluding in the middle of the third page (*r*); where the testator having obtained a form of will, lithographed on the first page only, wrote his will on the second and third pages, but signed his name at the bottom of the lithographed form (*s*); and where the testator's name was written only in

(*n*) *Woodley, In goods of* (1864), 3 S. & T. 429; 33 L. J. P. 154.

(*o*) *Kimpton, In goods of* (1864), 3 S. & T. 427; 33 L. J. P. 153; 10 L. T. 137. See also *Cattrall, In goods of* (1864), 3 S. & T. 419; 33 L. J. P. 106.

(*p*) *Puddephatt, In goods of* (1870), L. R. 2 P. & D. 97; 39 L. J. P. 84. See also *Jones, In goods of* (1877), 46 L. J. P. 80.

(*q*) *Trott* v. *Skidmore* (1860), 2 S. & T. 12; 29 L. J. P. 156; 2 L. T. 519.

(*r*) *Hunt* v. *Hunt* (1866), L. R. 1 P. & D. 209; 35 L. J. P. 135; 14 L. T. 859; *Hammond, In goods of* (1863), 3 S. & T. 90; 32 L. J. P. 200; 8 L. T. 516; *Archer, In goods of* (1871), L. R. 2 P. & D. 252; 40 L. J. P. 80; 25 L. T. 274.

(*s*) *Wotton, In goods of* (1874), L. R. 3 P. & D. 159; 43 L. J. P. 14; 30 L. T. 75. But this case

1 Vict. c. 26, s. 9. Signature of testator sufficient.

the attestation or testimonium clause (*t*); where for want of space, the signature of the testator was at right angles to the will (*u*); where, the will being written on the first and second pages of a sheet of paper, the signature of the testator was written on the third page (*x*); where, the will being written on three sides of a sheet of paper, the signature of the testator was partly on the second and partly on the third page (*y*); and where the will being written on the first and third pages of a sheet of paper, the signature of the testator was written crossways on the second page (*z*).

was explained and differed from by the late Sir Francis Jeune in *Royle* v. *Harris*, (1895) P. 163; 64 L. J. P. 65; 72 L. T. 474. There a testatrix filled in the first page of a lithographed form of will and signed at the foot in the presence of two witnesses. In it she made various bequests to "*my sisters and friends.*" On the second and third pages she wrote the names of the "*sisters and friends*," with their addresses and particulars of the bequests. The Court held that, assuming the second and third pages to have been written before the execution of the will, the signature of the testatrix was not so placed "*opposite to*" the writing contained in these pages, as to bring the case within sect. 1 of 15 Vict. c. 24, and that therefore the first page alone could be admitted to probate. And where the whole disposing part of a will was written on the first side of a sheet of foolscap, the second and third sides were blank, and the attestation clause with the signatures of the testator and witnesses was on the fourth side, the will was held duly executed. *Fuller, In goods of*, (1892) P. 377; 62 L. J. P. 40; 67 L. T. 501. See also *Anstee, In goods of*, (1893) P. 283; 63 L. J. P. 61; *Gilbert, In goods of* (1898), 78 L. T. 762; *Gee, In goods of* (1898), 78 L. T. 843; *Millward* v. *Buswell* (1904), 20 T. L. R. 714.

(*t*) *Walker, In goods of* (1861), 2 S. & T. 354; 31 L. J. P. 62; 5 L. T. 766; *Casmore, In goods of* (1869), L. R. 1 P. & D. 653; 38 L. J. P. 54; 20 L. T. 497; *Huckvale, In goods of* (1867), L. R. 1 P. & D. 375; 36 L. J. P. 84; 16 L. T. 434; *Pearn, In goods of* (1876), 1 P. D. 70; 40 L. J. P. 31; 33 L. T. 705. As to what the Act means by the "*testimonium*" clause, see *Mann, In goods of* (1859), 28 L. J. P. 59.

(*u*) *Jones, In goods of* (1865), 4 S. & T. 1; 34 L. J. P. & M. 41; 13 L. T. 210.

(*x*) *Wright, In goods of* (1865), 4 S. & T. 35; 34 L. J. P. 104; 13 L. T. 195; *Williams, In goods of* (1866), L. R. 1 P. & D. 4; 35 L. J. P. 2; 13 L. T. 304.

(*y*) *Powell, In goods of* (1865), 4 S. & T. 34; 34 L. J. P. 107; 13 L. T. 195.

(*z*) *Coombs, In goods of* (1867), L. R. 1 P. & D. 302; 36 L. J. P. 25; 15 L. T. 363. See also *Ains-*

But where the testator, after signing his name to his will in the presence of two witnesses, added a clause to it, the writing being squeezed into the space above or beside the signature, and immediately afterwards the witnesses signed their names, the Court held that he did not sign or acknowledge his signature to the will as containing such clause (*a*). 1 Vict. c. 26, s. 9. Signature of testator insufficient.

Again, where a testator, being paralyzed and partly speechless, intimated to his two medical men his desire to make a will, and they interpreted his wishes by signs, and wrote them on a card, and he executed the document by making his mark, which appeared in the middle of the writing, and they put their initials as witnesses at the back; it was held that though the card constituted a valid testamentary paper, duly witnessed, it was not signed at the "foot or end" within the meaning of the statute (*b*); and a codicil on the third sheet of a duly executed will, executed by the signature of the testator and witnesses in the margin of the first sheet of the will, was also held insufficient (*c*). Codicil on third page of will.

But, provided that the testator's signature is at the "foot or end" of the document, the position of the witnesses' signatures is not so important; and in the absence of affirmative proof that the witnesses did not see or could not have seen the signature of the testator (unless there is evidence to the contrary), and there is a proper attestation clause, or where there is evidence that the testator knew the law, the Court will presume that the attesting witnesses saw the signature (*d*). If testator's signature at foot or end, position of witnesses' signatures of less importance.

And whatever be the position of the testator's signature

worth, In goods of (1871), L. R. 2 P. & D. 151; 23 L. T. 324.

(*a*) *Arthur, In goods of* (1872), L. R. 2 P. & D. 273; 25 L. T. 274. And see *White, In goods of*, (1896) 1 Ir. 269.

(*b*) *Margary* v. *Robinson* (1887), 12 P. D. 8; 56 L. J. P. 42; 57 L. T. 281. But see *Royle* v. *Harris, supra*, note (*s*).

(*c*) *Hughes, In goods of* (1887), 12 P. D. 107; 56 L. J. P. 71; 57 L. T. 495.

(*d*) *Woodhouse* v. *Balfour* (1889), 13 P. D. 2; 57 L. J. P. 22; 58 L. T. 59.

Insufficient execution.

the Court must, as already stated, be satisfied that he wrote his name before the attesting witnesses wrote theirs (*e*).

A duly attested signature on the earlier pages of a will has been held insufficient in cases where an unattested signature appeared on the later pages (*f*).

Again, where a will was written on a printed form by a testator's directions, and was contained partly on a first page and partly on a second, and the attestation was at the bottom of the first page, and there was no attestation on the second page, the Court excluded the second page from probate (*g*).

Signature of attesting witnesses under. Wills Act, s. 9.

The 9th section of the Wills Act (*h*) further provides that the signature of the testator "shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

(*e*) *Moore* v. *King* (1843), 3 Curt. 243; *Cooper* v. *Bockett* (1843), 3 Curt. 648; 4 Moo. P. C. 419; *Allen, In goods of* (1840), 2 Curt. 331; *Olding, In goods of* (1840), 2 Curt. 865; *Simmonds, In goods of* (1842), 3 Curt. 79; *Byrd, Re* (1842), 3 Curt. 117; *Pennant* v. *Kingscote* (1842), 3 Curt. 643; *Hindmarsh* v. *Charlton* (1861), 8 H. of L. 160; 4 L. T. 125; *Beckett* v. *Howe* (1870), L. R. 2 P. & D. 1; 39 L. J. P. 1; 21 L. T. 400. See also *Wyatt* v. *Berry*, (1893) P. 5; 62 L. J. P. 28; 68 L. T. 416; *Brown* v. *Skirrow*, (1902) P. 3; 71 L. J. P. 19; 85 L. T. 645.

(*f*) *Dilkes, In goods of* (1874), L. R. 3 P. & D. 164; 43 L. J. P. 38; 30 L. T. 305; *Phipps* v. *Hale* (1874), L. R. 3 P. & D. 166. And see further, as to position of testator's signature, *Davis, In goods of* (1843), 3 Curt. 748; *Chamney, In goods of* (1850), 1 Robert. 757; *Roberts* v. *Phillips* (1855), 4 E. & B. 450; 24 L. J. Q. B. 171; followed in *Streatley, In goods of*, (1891) P. 172; 60 L. J. P. 56; *Ewen* v. *Franklin* (1855), Dea. & Sw. 7; *Sweetland* v. *Sweetland* (1865), 4 S. & T. 6; 34 L. J. P. 42; 11 L. T. 749; *Dallow, In goods of* (1866), L. R. 1 P. & D. 189; 35 L. J. P. 81; 14 L. T. 573; *Pearse, In goods of* (1867), L. R. 1 P. & D. 382; 36 L. J. P. 117; 16 L. T. 853; Wms. on Exors. 10th ed. pp. 54—62.

(*g*) *Malen, In goods of* (1885), 54 L. J. P. 91; *Greenwood, In goods of*, (1892) P. 7; 61 L. J. P. 56; 66 L. T. 61; *Anstee, In goods of*, (1893) P. 283; 63 L. J. P. 61; *Royle* v. *Harris, supra*, p. 54, note (*s*). See also *Gilbert, In goods of* (1898), 78 L. T. 762; *Gee, In goods of* (1898), 78 L. T. 843.

(*h*) 1 Vict. c. 26.

No attestation clause necessary.

"It is, therefore, sufficient if the witnesses, without any attestation clause of any description, merely subscribe their names. But it must be observed, that unless there is an attestation clause, reciting that the formalities prescribed by the Act have been complied with, the executor cannot obtain probate in the usual way on his own oath alone, but must produce an affidavit from one of the attesting witnesses, or some other satisfactory evidence, showing that the solemnities have been performed, as required by the statute" (*i*).

Witness must sign or make mark.

To constitute a valid subscription by an attesting witness under this section, it is not necessary that he should actually sign his name, but he must at least make, or assist in making, some mark on the will, with the intention that that mark shall represent his signature (*k*).

Meaning of term "subscribe" in sect. 9.

It has been held that the word "subscribed" does not merely mean *written underneath* the testator's signature, but written upon the will with the intention of attesting it (*l*). Therefore, where the attesting witnesses signed their names in the margin of the first and second sheets opposite certain amendments, it was held, on proof that they signed with the intention of attesting the testator's signature, that this was a valid subscription within the requirements of the ninth section (*m*). The witness's initials will suffice (*n*), and although able to write, he may nevertheless sign by mark (*o*), or if he be illiterate he may have his hand guided (*p*); nor need he sign his own name; so where the

(*i*) Wms. on Exors. 10th ed. pp. 62, 70. As to the meaning of the expression "*in the presence*" in the Wills Act, see *Brown* v. *Skirrow*, *supra*, note (*e*). See also *Byles* v. *Cox* (1894), 74 L. T. 222.

(*k*) *Ashmore, In goods of* (1843), 3 Curt. 756; *Amiss, In goods of* (1855), 2 Robert. 116; 7 Notes of Cas. 274; *Hindmarsh* v. *Charlton* (1861), 8 H. of L. 160; 4 L. T. 125. See also *Horne* v. *Featherstone* (1895), 73 L. T. 32; *Dayman* v. *Dayman* (1895), 71 L. T. 699.

(*l*) *Roberts* v. *Phillips*, *supra*, note (*f*).

(*m*) *Streatley, In goods of*, (1891) P. 172; 60 L. J. P. 56.

(*n*) *Christian, In goods of* (1850), 2 Robert. 110.

(*o*) *Amiss, In goods of*, *supra*, note (*k*).

(*p*) *Harrison* v. *Elvin* (1842), 3 Q. B. 117; *Frith, In goods of*

Signature of attesting witnesses.

witness instead of his name subscribed "servant to Mr. S.," it was held a sufficient attestation (*q*).

But one witness cannot subscribe for the other (*r*); so, where one of the attesting witnesses, at the request of the testator, signed her husband's name instead of her own, the Court held she had not duly subscribed the will (*s*).

One witness cannot subscribe for the other.

Where the deceased and one of the attesting witnesses having both *affixed* their marks, the second attesting witness then wrote the name of the deceased and of the first attesting witness against their respective marks, and also the word "*witness*," but did not himself otherwise subscribe the will, the Court held that he did not, by any word he wrote, attest the signature of the deceased (*t*).

Tracing over previous signature with dry pen.

Where an attesting witness to a will, on the re-execution thereof by the testator, merely traced over his previous signature with a dry pen, it was held that he had not subscribed the will within the meaning of the statute (*u*).

Court must be satisfied that witnesses' names were subscribed to will for purpose of attesting testator's signature.

It must be borne in mind that a testamentary paper cannot be admitted to probate, unless the Court is satisfied that the names of the alleged witnesses were subscribed on it for the purpose of attesting the testator's signature (*x*).

With respect to the making or acknowledgment of his or her signature by the testator or testatrix in the presence

(1858), 1 S. & T. 8; 27 L. J. P. 6; *Lewis* v. *Lewis* (1861), 2 S. & T. 153; *Kilcher, In goods of* (1847), 6 Notes of Cas. 15.

(*q*) *Sperling, In goods of* (1864), 3 S. & T. 272; 33 L. J. P. 25; 9 L. T. 348; *Oliver, Re* (1854), 2 Eccl. & Adm. 57.

(*r*) *White, In goods of* (1843), 2 Notes of Cas. 46.

(*s*) *Leverington, In goods of* (1886), 11 P. D. 80; 55 L. J. P. 62.

(*t*) *Eynon, In goods of* (1874), L. R. 3 P. & D. 92; 42 L. J. P. 52. See also *Trevannion, In goods of* (1852), 2 Robert. 31.

(*u*) *Playne* v. *Scriven* (1848), 1 Robert. 772; *Maddock, In goods of* (1874), L. R. 3 P. & D. 169; 43 L. J. Ch. 29; 30 L. T. 696.

(*x*) *Wilson, In goods of* (1867), L. R. 1 P. & D. 269; *Braddock, In goods of* (1876), 1 P. D. 433; 45 L. J. P. 96; *Sharman, In goods of* (1869), L. R. 1 P. & D. 661; *Griffiths* v. *Griffiths* (1872), L. R. 2 P. & D. 300; 41 L. J. P. 14; 25 L. T. 574; *Streatley, In goods of*, (1891) P. 172; 60 L. J. P. 56. And see, on the subject of the attestation of wills generally, Wms. on Exors. 10th ed. pp. 62—80.

of the witnesses, as provided by sect. 9 of 1 Vict. c. 26, the decisions have been somewhat contradictory; but this, no doubt, is partly accounted for by the desire of the Courts, wherever possible, to give effect to the wishes of the deceased. Testator's signature.

It has been held that it is not absolutely necessary that the attesting witnesses should see that the testator signed his name, for it will suffice if they see him writing something on a testamentary paper although they may not know what it was he wrote (*y*); but it will not suffice if nothing were written on the document in the presence of the witnesses, nor any observation made by the testator or any other person in the room (*z*). Sufficient if witnesses see testator writing something on will.

The witnesses must, at the time of the acknowledgment, either see or at least have the opportunity of seeing the signature of the testator (*a*). Witness must see or be able to see testator's signature.

A testator may also sufficiently acknowledge his signature in the presence of the witnesses, if they are asked to witness his signature by a third person. For the request of a third person in the presence of the testator may be equivalent to the request of the testator (*b*).

It was held by Lord Penzance that witnesses must in every case be aware that the document they are attesting is testamentary (*c*). Witness must be aware that paper is testamentary.

But where a testatrix exhibited a codicil to her last will which was entirely in her own handwriting to one of the

(*y*) *Smith* v. *Smith* (1866), L. R. 1 P. & D. 143; 35 L. J. P. 65; 14 L. T. 417.

(*z*) *Ilott* v. *Genge* (1843), 4 Moo. P. C. 265; 3 Curt. 172.

(*a*) *Blake* v. *Blake* (1882), 7 P. D. 102; 51 L. J. P. 36; 51 L. J. Ch. 377; 46 L. T. 641; *Wright* v. *Sanderson* (1884), 9 P. D. 149; 53 L. J. P. 49; 50 L. T. 769; *Daintree* v. *Fasulo* (1888), 13 P. D. 67, 102; 57 L. J. P. 76; 58 L. T. 661. See also *Huckvale, In goods of* (1867), L. R. 1 P. & D. 375; 36 L. J. P. 84; 16 L. T. 434; *Gwillim* v. *Gwillim* (1860), 3 S. & T. 200; 29 L. J. P. 31; *Hudson* v *Parker* (1845), 1 Robert. 14.

(*b*) *Inglesant* v. *Inglesant* (1874), L. R. 3 P. & D. 172; 43 L. J. P. 43; 30 L. T. 909; *Faulds* v. *Jackson* (1848), 6 Notes of Cas. Suppl. 1; *Jones, Re* (1855), Dea. & Sw. 3.

(*c*) *Pearson* v. *Pearson* (1871), L. R. 2 P. & D. 451; 40 L. J. P. 53; 24 L. T. 917.

Acknowledgment of signature by testator. What amounts to.

attesting witnesses, telling her she had something which required two witnesses; and subsequently, the second attesting witness having come into the room, they both signed, but the testatrix did not tell them it was a testamentary paper, nor did they know what sort of paper it was they had attested; nor did they recollect seeing the testatrix sign, but one of them was clear that her signature was there at the time they signed: Butt, P., held there had been a sufficient acknowledgment by the testatrix of her signature, and his judgment was confirmed by the Court of Appeal (*d*).

Mutual presence of testator and witnesses. What amounts to.

It is not necessary that the testator and the witnesses should be actually in the same room during the execution of the testamentary paper, provided they were in such a position that they could have seen one another, had they chosen to do so (*e*). The testator must, it would seem, be conscious of the presence of the attesting witnesses (*f*).

The following are the most recent decisions on this point:—

A testator signed his will in his bedroom, and the attesting witnesses added their signatures in the adjoining dressing room, the door between the two rooms being open at the time. On its being shown that the testator could not have had the witnesses in sight when they attested the will, it was held that the will was not duly executed (*g*).

The expression "*in the presence*" in sect. 9 of the Wills Act (1 Vict. c. 26), must be taken to mean actual visual

(*d*) *Daintree* v. *Fasulo* (1888), 13 P. D. 102; 57 L. J. P. 76; 58 L. T. 661. See also *Thomson, In goods of* (1845), 4 Notes of Cas. 643; *Moore, In goods of*, (1901) P. 44; 70 L. J. P. 16; 84 L. T. 60.

(*e*) *Norton* v. *Bassett* (1856), Dea. & Sw. 259; *Trinmell, In goods of* (1865), 11 Jur. N. S. 248, 249, where Sir J. P. Wilde laid it down that the true test is whether the testator might have seen, not whether he did see, the witnesses write their names.

(*f*) *Right* v. *Price* (1780), Doug. 241; *Kellick, In goods of* (1863), 3 S. & T. 378; *Jenner* v. *Ffinch* (1880), 5 P. D. 106. And see Wms. on Executors, 10th ed. p. 70, note (*d*).

(*g*) *Carter* v. *Seaton* (1901), 85 L. T. 76.

presence. Where a testatrix signed her will in a shop, and one witness, who saw her sign, attested it, but the other witness being, at the time when the testatrix and first witness signed, engaged at the other side of the shop with a person who stood between him and the testatrix, and did not know nor had the opportunity of knowing anything about what they had been engaged upon until after they had signed, when he was asked to be a witness: the Court held that the testatrix did not sign in "*the presence*" of the second witness (*h*).

1 Vict. c. 26, s. 9—"in the presence of"—what amounts to.

In arriving at its conclusions in the absence of direct evidence, the Court is in a great measure guided by the appearance of the document itself, and "the presumption *omnia ritè esse acta* applies," as a general rule, where a testamentary paper appears on the face of it to have been duly attested (*i*).

Presumption as to due execution—"*omnia ritè esse acta*."

The fact that the attestation clause is not altogether formal, will not alone be sufficient to rebut this presumption, nor, at any rate where the will has a full attestation clause, will the deficient recollection of witnesses (*k*), or even the actual contrary evidence of one of them, alone suffice to do so (*l*).

But on the other hand this presumption may be rebutted by the surrounding circumstances of the case; as where a will had no formal attestation clause, and the witnesses merely remembered that the paper was produced to them and they were asked to sign it, but there was no evidence to show whether the testator's name was on the paper at

How rebutted.

(*h*) *Brown* v. *Skirrow*, (1902) P. 3; 71 L. J. P. 19; 85 L. T. 645.

(*i*) *Wright* v. *Sanderson* (1884), 9 P. D. 149; 53 L. J. P. 49; 50 L. T. 569; *Lloyd* v. *Roberts* (1858), 12 Moo. P. C. 158; *Burgoyne* v. *Showler* (1844), 1 Rob. 5, 9, 12; *Smith* v. *Smith* (1866), L. R. 1 P. & D. 143; 35 L. J. P. 65; 14 L. T. 417; *Doe* v. *Davies* (1847), 9 Q. B. 648; 16 L. J. Q. B. 97; *Leech* v. *Bates* (1848), 1 Rob. 714; 6 Notes of Cas. 704.

(*k*) *Vinnicombe* v. *Butler* (1865), 3 S. & T. 580; 34 L. J. P. 18; *Rees, In goods of* (1865), 34 L. J. P. 56.

(*l*) *Wright* v. *Rogers* (1869), L. R. 1 P. & D. 678; 38 L. J. P. 67; 21 L. T. 156.

Presumption as to due execution—"*omnia ritè esse acta.*"

the time they so signed it or not (*m*); or where a will appeared properly signed and attested and had a proper attestation clause, but it was shown that at the time of the execution the deceased did not refer to the paper as his will, nor was there any evidence that the deceased's signature was on the paper at the time (*n*).

Will written on several sheets.

"No provision is contained in the Act as to wills written on several sheets. And, therefore, the decisions on the Statute of Frauds appear to be authorities; and they have established that if a will be written on several, or even separate, sheets, and the last alone be attested, the whole will is well executed, provided the whole be in the room, and although a part may not have been seen by the witnesses; and that it is a question for a jury whether all the papers constituting the will were in the room; and further that the presumption is in the affirmative" (*o*).

By sect. 11 of the Wills Act (1 Vict. c. 26), it is enacted as follows:—

Soldiers' and mariners' wills excepted.

"Provided always, and be it further enacted, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act."

And sect. 23 of the Statute of Frauds (29 Car. 2, c. 3), is couched in almost exactly similar language.

Subject, therefore, to the provisions of the Navy and Marines (Wills) Act, 1865 (28 & 29 Vict. c. 72) (*p*), which

(*m*) *Fischer* v. *Popham* (1875), L. R. 3 P. & D. 246; 44 L. J. P. 47; 33 L. T. 231; *Swinford, In goods of* (1869), L. R. 1 P. & D. 630; 38 L. J. P. 38; 20 L. T. 87; *Peverett, In goods of*, (1902) P. 205; 7 L. J. P. 114; 87 L. T. 143.

(*n*) *Croft* v. *Croft* (1865), 4 S. & T. 10; 34 L. J. P. 44; 11 L. T. 781.

(*o*) Wms. on Exors. 10th ed. p. 73. See *Bond* v. *Seawell* (1765), 3 Burr. 1773; *Gregory* v. *Queen's Proctor* (1846), 4 Notes of Cas. 620, 639; *Marsh* v. *Marsh* (1861), 1 S. & T. 528; 30 L. J. P. 77; *Fuller, In goods of*, (1892) P. 377; 62 L. J. P. 40; 67 L. T. 501; *Pearse, In goods of* (1867), L. R. 1 P. & D. 382; 36 L. J. P. 117; *Hatton, In goods of* (1881), 6 P. D. 204; 50 L. J. P. 78; 16 L. T. 853; *Ewen* v. *Franklin* (1855), Dea. & Sw. 7; *Phipps* v. *Hale* (1874), L. R. 3 P. & D. 166.

(*p*) *Ante*, p. 39; *post*, Appendix.

applies only to inferior officers and ordinary seamen, and was passed to prevent the numerous frauds to which seamen are peculiarly liable, almost any document, clearly testamentary, however executed, emanating from a soldier in actual military service, or seaman at sea, comes within the exception, and is entitled to probate. 1 Vict. c. 26, s. 11. Soldiers' and mariners' wills.

The terms, "soldier" and "mariner or seaman," include all members of these professions, from the highest to the lowest.

The word *soldier* includes soldiers who were in the service of the East India Company, even non-combatant officers, as surgeons in the East India Company's service (*q*); and the party, even though a minor, has the power of making a will, if he be within the words of this section (*r*). "Soldier." Minor.

The words *mariner* or *seamen* include seamen in the merchant service: at least, similar words in the Statute of Frauds were held to include them; for the Court granted administration with a nuncupative will annexed (as contained in an affidavit of three witnesses), holding that the 29 Car. 2, c. 3, s. 23, applied to merchant seamen (*s*). "Mariner or seamen." Merchant seamen.

A purser in a man-of-war comes within the description (*t*). Purser.

What constitutes "actual military service" was fully discussed in *Drummond* v. *Parish*, and it was decided that the words, as respects the British soldier, are confined to those who are *on an expedition:* Consequently it has been held that a will of a soldier made while he was quartered at home (*u*), or in the Colonies (*x*), is not privileged. "Actual military service." What is.

(*q*) *Donaldson, In goods of* (1838), 2 Curt. 386.

(*r*) *Farquhar, In goods of* (1846), 4 Notes of Cas. 651, 652; *McMurdo, In goods of* (1868), L. R. 1 P. & D. 540; 37 L. J. P. 14; 17 L. T. 393.

(*s*) *Morrell* v. *Morrell* (1827), 1 Hagg. 51; *Milligan* v. *Milligan* (1852), 2 Robert. 108; *Parker, In goods of* (1859), 2 S. & T. 375; 28 L. J. P. 91.

(*t*) *Hayes, In goods of* (1838), 2 Curt. 338.

(*u*) *Drummond* v. *Parish* (1842), 3 Curt. 522.

(*x*) *White* v. *Repton* (1844), 3 Curt. 818; *Phipps, In goods of* (1838), 2 Curt. 368; *Johnson, In goods of* (1840), 2 Curt. 341.

1 Vict. c. 26, s. 11. Soldiers and seamen on actual service.

But where a volunteer offered himself for service in South Africa: on February 3rd, 1900, he was accepted. On February 19th he left his home and went to reside in barracks. On March 2nd he received his final orders to sail. On March 8th he made his will; and on March 10th he sailed for South Africa. In May he came of age; and on July 27th died of his wounds in South Africa: Held, that from the moment he left his home and went into barracks, *en route* for the seat of war, he was *in expeditione*, and his will was valid, though he was an infant at the time he made it (*y*).

Actual military service, what is.

Where a battalion stationed in India was warned for service on September 7th, 1899, and two days afterwards was ordered to mobilize for active service in South Africa, and sailed on September 19th, a letter written by a private soldier in that battalion between September 8th and September 28th, containing directions as to the disposition of his property (*z*); and a declaration made, at the instance of the military authorities, who made a note of it at the time, by a soldier on active service that he wished all his effects to be credited to one of his sisters (*a*), were held valid wills under sect. 11 (*a*).

And a surgeon in the East India Company's service, whilst on board ship on his way out to join his regiment in India, was held to be in "actual military service" (*b*).

Where the deceased was on his way from one regiment to another, both of which were on actual military service, it was held that his will was privileged (*c*).

Where a military officer on active service during the Maori

(*y*) *Hiscock, In goods of*, (1901) P. 78; 70 L. J. P. 22; 84 L. T. 51.

(*z*) *Gattward* v. *Knee; May* v. *May*, (1902) P. 99, 103, n.; 71 L. J. P. 34; 86 L. T. 119, 120.

(*a*) *Scott, In goods of*, (1903) P. 243; 73 L. J. P. 17; 8 L. T. 588.

(*b*) *Donaldson, In goods of, supra*, p. 63, note (*q*).

(*c*) *Herbert* v. *Herbert* (1670), Dea. & Sw. 10; *Thorne, In goods of* (1865), 4 S. & T. 36; 34 L. J. P. 131; 12 L. T. 639.

war in 1864 wrote to his sister a letter containing testamentary dispositions, and the testator lived until July 10th, 1896, without having ever asked his sister for the letter or in any way revoked the testamentary dispositions contained in it, the Court held that the disposition of the property of the deceased was not dependent on his death whilst on active service, and that it was valid as the will of a soldier made on active service (*d*). 1 Vict. c. 26, s. 11.

A surgeon in the navy is a mariner or seaman within the section (*e*). "Being at sea."

A mate, whilst on board her Majesty's ship Excellent, which was permanently stationed in Portsmouth Harbour, has been held to be a seaman at sea within the meaning of the statute (*f*), and to come under the exception contained in the statute as a seaman at sea; and, although a minor at the time, that he had legally executed a will. Minor "being at sea."

Where a seaman went on shore and there died by an accident, his will was allowed to pass as that of "a seaman being at sea" (*g*). Seaman dying while temporarily on shore.

A letter containing testamentary dispositions written on a ship lying in a river before the ship has actually sailed, may be valid as a will made by a seaman at sea (*h*).

(*d*) *Spratt, In goods of*, (1897) P. 28; 66 L. J. P. 25; 75 L. T. 518.

(*e*) *Saunders, In goods of* (1866), L. R. 1 P. & D. 16; 35 L. J. P. 26; 13 L. T. 411.

(*f*) *McMurdo, In goods of* (1868), L. R. 1 P. & D. 54; 37 L. J. P. 14; 17 L. T. 393.

(*g*) *Lay, In goods of* (1840), 2 Curt. 375; distinguished from *Euston (Earl of)* v. *Seymour* (1837), 2 Curt. 339; 3 Curt. 530, where a naval commander-in-chief on active service, but permanently residing on shore, was held not to come within the statute.

(*h*) *Patterson, In goods of* (1898), 79 L. T. 123.

CHAPTER VIII.

HOW A WILL MAY BE REVOKED, AND HOW IT MAY BE REVIVED AFTER REVOCATION (*a*).

1 Vict. c. 26, s. 18.

THE sections of the Wills Act regulating the revocation of wills since January 1st, 1838, are sects. 18, 19, 20, and 21 (*a*).

Will, revocation by marriage.

Sect. 18 provides, "that every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions)."

"The reason for this exception is that a revocation of the will in a case to which the exception applies would operate only in favour of those entitled under the settlement in default of appointment, and the new family of the testator would derive no benefit whatever from it" (*b*).

Sect. 19. Presumption of intention.

By sect. 19, "No will shall be revoked by any presumption of intention, on the ground of an alteration in circumstances."

Sect. 20. Revocation by will or codicil,

By sect. 20, "No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another

(*a*) See Wms. on Exors. 10th ed. pp. 94—156.

(*b*) Wms. on Exors. 10th ed. p. 138, n. (*a*), citing *Fitzroy, In goods of* (1858), 1 S. & T. 133; *Fenwick, In goods of* (1867), L. R. 1 P. & D. 319; 36 L. J. P. 54; 16 L. T. 124; *M'Vicar, In goods of* (1869), L. R. 1 P. & D. 671; 38 L. J. P. 84; 20 L. T. 1013; *Russell, In goods of* (1890), 15 P. D. 111; 59 L. J. P. 80; 62 L. T. 644.

will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same;" and these are now the only methods by which a will can be revoked.

or other writing; burning, tearing, or otherwise destroying.

To revoke a will by marriage, the marriage must be valid by the laws of this country, and there is no distinction in this respect between a natural-born and a naturalized British subject (*c*).

Revocation of will by marriage.

But marriage will not operate to revoke a will if the testator be, at the time of his marriage, domiciled in a country where marriage has not that effect; neither will a subsequent change of domicil affect his position (*d*).

An unmarried Frenchwoman, resident in England, executed a will valid by French law. Subsequently she was legally married, in England, to a French refugee, who had come over to escape a sentence of imprisonment. The husband carried on business in England for some time, but, as soon as he could do so with safety, he sold his business to his wife, and went to reside permanently in France. The wife remained in England and continued carrying on the business until her death. Held by Rigby and Vaughan Williams, L.JJ. (diss. Lindley, M.R.), that the domicil of the husband, and consequently of the wife at the time of the marriage, was English, and, therefore, that the question of the validity of the ante-nuptial will was governed by English and not by French law, so that the will was revoked by the marriage (*e*).

(*c*) *Mette* v. *Mette* (1859), 1 S. & T. 416; 28 L. J. P. 117; *Warter* v. *Warter* (1890), 15 P. D. 152; 59 L. J. P. 87; 63 L. T. 250.

(*d*) *Reid, In goods of* (1866), L. R. 1 P. & D. 74; 35 L. J. P. 43; 13 L. T. 680; *Groos, In goods of*, (1904) P. 269.

(*e*) *Loustalan* v. *Loustalan*, (1900) P. 211; 69 L. J. P. 75; 82 L. T. 806, C. A. See also 68 L. J. P. 106; 81 L. T. 459, cited as *Mar-*

1 Vict. c. 26, s. 18. Sect. 20. By another will or codicil.

"It may be stated generally, as a canon of construction, that a clear gift cannot be cut down by any subsequent words, unless they show an equally clear intention" (*f*).

It follows, therefore, that the execution of a subsequent testamentary paper does not necessarily revoke a previous will, unless it contain words to that effect. The general rule in interpreting a will and codicil is, that the old will will take effect as far as it is not inconsistent with the codicil, and if a subsequent testamentary paper is only partly inconsistent with one of earlier date, the earlier instrument is only revoked as to those parts as to which it is inconsistent, and both papers must be admitted to probate, as together containing the last will of the deceased (*g*), after which the documents come under the jurisdiction of the Court of Construction, whose function it is to explain the effect of them.

In the case of *Cadell* v. *Willcox* (1898), it was held that the execution of a limited power of appointment contained in an earlier will was not revoked by general words of bequest contained in a later will (*h*).

tin, In re, Wms. on Exors. 10th ed. p. 1264.

(*f*) Wms. on Exors. 10th ed. p. 133, citing *Kiver* v. *Oldfield* (1859), 4 De G. & J. 30.

(*g*) *Masterman* v. *Maberly* (1830), 2 Hagg. 235; *Sandford* v. *Vaughan* (1809), 1 Phill. 39, 128; *Harley* v. *Bagshaw* (1812), 2 Phill. 48; *Graham, In goods of* (1863), 3 S. & T. 69; 32 L. J. P. 113; 8 L. T. 610; *Geaves* v. *Price* (1863), 3 S. & T. 71; 32 L. J. P. 113; 8 L. T. 610; *Budd, In goods of* (1863), 3 S. & T. 196; *Birks* v. *Birks* (1865), 4 S. & T. 23; 34 L. J. P. 90; 13 L. T. 193; *Fenwick, In goods of* (1867), L. R. 1 P. & D. 319; 36 L. J. P. 54; 16 L. T. 154; *Nickalls, In goods of* (1865), 4 S. & T. 40; 34 L. J. P. 103; *Harris, In goods of* (1870), L. R. 2 P. & D. 83; 39 L. J. P. 48; 22 L. T. 630; *Donaldson, In goods of* (1873), L. R. 3 P. & D. 45; 42 L. J. P. 19; 28 L. T. 477; *Petchell, In goods of* (1874), L. R. 3 P. & D. 153, 156; 43 L. J. P. 22; 30 L. T. 74; *Lemage* v. *Goodban* (1866), L. R. 1 P. & D. 57; 35 L. J. P. 28; 13 L. T. 508; *Richards* v. *Queen's Proctor* (1852), 18 Jur. 540; *Stoddart* v. *Grant* (1851), 1 Macq. H. L. 163; *Cadell* v. *Willcox*, (1898) P. 21, 25; 67 L. J. P. 8; 78 L. T. 83; *Elcom, In re*, (1894) 1 Ch. 314; 63 L. J. Ch. 392; 70 L. T. 54. See also *Hellier* v. *Hellier* (1884), 9 P. D. 237; 53 L. J. P. 105; *Robinson* v. *Clarke* (1878), 2 P. D. 269; 47 L. J. P. 17; 39 L. T. 43.

(*h*) (1898) P. 21; 67 L. J. P. 8; 78 L. T. 83.

1 Vict. c. 26, s. 20. By another will, codicil, or other writing.

Where a testator, having made a will reciting a power of appointment and exercising or purporting to exercise that power, made a subsequent will, which contained no clause of revocation and no reference to the power, but by which he purported to "*give, devise, bequeath and appoint*" all his real and personal estate:—Held that the word "*appoint*" was, under the circumstances, a sufficient exercise of the power, and that the second will by implication revoked the first (*i*).

Words "last will," effect of.

It was held by Sir H. J. Fust, that if a testator executed a paper purporting to be "*his last will*," and in which executors were appointed, although it might dispose of a portion only of his personal estate, and did not expressly revoke a former testamentary paper, that the former was nevertheless revoked by the latter, the words "*last will*" being in his opinion conclusive, in spite of the fact that the two documents might not be wholly inconsistent (*k*). This decision was subsequently acted upon by Sir John Dodson, whose judgment was, however, reversed on appeal by the Judicial Committee of the Privy Council (*l*), and it is now settled law that the mere use of the words "*last will*" does not necessarily revoke all previous instruments.

In giving judgment in *Lemage* v. *Goodban* (*m*), Lord Penzance cited the following passage from Williams on Executors, as correctly expressing the law on this subject: "The mere fact of making a subsequent testamentary paper does not work a total revocation of a prior one, unless the latter expressly, or in effect, revoke the former, or the two be incapable of standing together; for though it be a maxim, as Swinborne says above, that 'no man can die with two testaments,' yet any number of instruments, whatever be their relative date, or in whatever form they

(*i*) *Kent* v. *Kent*, (1902) P. 108; 71 L. J. P. 50; 86 L. T. 536.

(*k*) *Plenty* v. *West* (1853), 1 Robert. 264; 4 Notes of Cas. 103; 16 Beav. 173; 22 L. J. Ch. 125.

(*l*) *Cutts* v. *Gilbert* (1854), 9 Moo. P. C. 131.

(*m*) *Supra*, note (*g*), L. R. 1 P. & D. at p. 57.

1 Vict. c. 26, s. 20. By another will, codicil, or other writing. Words "last will," effect of.

may be (so as they be all clearly testamentary), may be admitted to probate as together containing the last will of the deceased. And if a subsequent testamentary paper be partly inconsistent with one of an earlier date, then such latter instrument will revoke the former, as to those parts only where they are inconsistent" (*n*).

Later will not forthcoming, no evidence as to contents of.

Where the revocation of an existing will is sought to be established by the proof of the execution of a subsequent will which is not forthcoming, the evidence ought to be most clear and satisfactory, and if parol evidence alone is relied upon, such evidence ought to be stringent and conclusive (*o*).

Burden of proof.

In the case of *Doe* v. *Hicks* (*p*), it was stated by Tindal, C.J., in delivering the opinion of the judges in the House of Lords, that the principle is that where the devise in a will is clear, it is incumbent on those who contend that it is not to take effect, by reason of a revocation in a subsequent testamentary paper, to show an intention to revoke equally clear with the original intention to devise (*q*).

Declarations of testator.

But it was held by the Court of Appeal that evidence of declarations of a testator is not admissible to prove that he executed his will in duplicate, nor to prove that he has destroyed one part with the intention of revoking the will (*r*).

General revocatory clause.

As a general rule, where a testamentary paper "contains a general revocatory clause, it operates as a revoca-

(*n*) See 10th ed. pp. 119, 120; see also judgment of Sir James Hannen in *Petchell, In goods of* (*supra*, note (*g*)), L. R. 3 P. & D. at p. 156.

(*o*) *Hellier* v. *Hellier*, *supra*, note (*g*).

(*p*) (1832) 8 Bing. 479.

(*q*) See Wms. on Exors. 10th ed. p. 133; see also *Patch* v. *Graves* (1855), 3 Drew. 348; *Robertson* v. *Powell* (1864), 2 H. & C. 762; 33 L. J. Ex. 34; 9 L. T. 543; *Butler* v. *Greenwood* (1856), 22 Beav. 303; *Norman* v. *Kynaston* (1861), 29 Beav. 96; 30 L. J. Ch. 189; 3 L. T. 826; *Molyneux* v. *Rowe* (1856), 8 De G. M. & G. 368.

(*r*) *Atkinson* v. *Morris*, (1897) P. 40; 66 L. J. P. 17; 75 L. T. 440.

tion of all prior testamentary acts. But . . . . probate may be granted of a paper of a date prior to such" testamentary paper, "provided the Court is satisfied that it was not the intention of the deceased to revoke the particular legacy which is the subject of the earlier paper" (*s*). 1 Vict. c. 26, s. 20. By another will, codicil, or other writing.

A testator gave all his property to J. S. and appointed her sole executrix. Afterwards he made a second will, devising his real estate to E. and appointing her sole executrix. He subsequently cancelled the second will. Held by the Court of Appeal, reversing the decision of the Court below, that the first will was partially revoked by the second, and that such revoked part was not revived by the cancellation of the second; therefore that probate must be granted of the first limited to such part of the testator's property as was not comprised in the second will, and that as to the property comprised in the second will there was an intestacy (*t*).

"But even an express revocation of all former wills, though not wanting in any circumstance for a revocation, will not operate as such, if only subservient to another subsequent disposition, which fails" (*u*). By express words.

A subsequent testamentary paper, executed as a will and not as a codicil, if it disposes of the whole of the testator's property, will, without express words, entirely revoke a former will (*x*); even though such former will contain the appointment of an executor (*y*). Without express words.

"If two inconsistent wills be found of the same date, or without any date, and no evidence can be adduced establishing the posteriority of the execution of either, both Inconsistent wills.

(*s*) Wms. on Exors. 10th ed. pp. 133, 134.

(*t*) *Hodgkinson, In goods of*, (1893) P. 339; 62 L. J. P. 116; 69 L. T. 540.

(*u*) Wms. on Exors. 10th ed. p. 133, per Sir W. Grant, 7 Ves. 379; unless it fails by reason of the incapacity of the legatee: *Tupper* v. *Tupper* (1855), 1 K. & J. 665; *Quinn* v. *Butler* (1868), L. R. 6 Eq. 225.

(*x*) *Henfrey* v. *Henfrey* (1843), 2 Curt. 468; affirmed, 4 Moo. P. C. 29.

(*y*) *Cottrell* v. *Cottrell* (1872), L. R. 2 P. & D. 397; 41 L. J. P. 57; 26 L. T. 527.

1 Vict. c. 26, s. 20. By another will, codicil, or other writing.

are necessarily void, and the deceased must be considered intestate. But in every case the Courts will struggle to reconcile them, if possible, and collect some consistent disposition from the whole" (*z*).

Later will not forthcoming. Evidence as to contents.

A will may also be revoked by a testamentary document of later date, not forthcoming, if there be evidence that such document has been in existence and duly executed, and contained a clause of revocation of former wills (*a*).

"Or by some writing."

The 20th section of the Wills Act further provides that a testamentary paper may be revoked "*by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed.*"

There seems to be some doubt whether a writing which only revokes the will to which it is attached ought to be admitted to probate (*b*).

"Or by some writing," meaning of words.

Where a testator sent a letter signed by himself and attested by two witnesses, desiring the destruction of his will, the letter was held to revoke the will (*c*).

Revocation by tearing, burning, or otherwise destroying.

In the Statute of Frauds, the words "*cancelling*" and "*obliterating*" occur. These words are omitted from the 20th section of the Wills Act, and the words "*otherwise destroying*" are substituted for them. "It has been considered that these words mean modes of destruction *ejusdem generis*, as cutting, throwing into water, or the like, and therefore exclude cancelling" (*d*).

(*z*) Wms. on Exors. 10th ed. p. 125, citing Swinb. Pt. VII. s. 11, pl. 1; Godolph. Pt. I. c. 19, s. 3; *Phipps* v. *E. of Anglesea* (1751), 7 Bro. P. C. 443, Toml. ed.

(*a*) *Brown* v. *Brown* (1858), 8 E. & B. 882; 27 L. J. Q. B. 173; *Brown, In goods of* (1858), 1 S. & T. 32; 27 L. J. P. 20; *Wood* v. *Wood* (1867), L. R. 1 P. & D. 309; 36 L. J. P. 34; 15 L. T. 593.

(*b*) Wms. on Exors. 10th ed. p. 97, note (*n*); *Fraser, In goods of* (1870), L. R. 2 P. & D. 40; 39 L. J. P. 20; 21 L. T. 680. See also *Hicks, In goods of* (1869), L. R. 1 P. & D. 683; 38 L. J. P. 65; 21 L. T. 300; *Hubbard, In goods of* (1866), L. R. 1 P. & D. 53; 35 L. J. P. 27. See *Eyre, In goods of* (1905), 2 Ir. Reps. 540. But see *Brenchley* v. *Still* (1852), 2 Robert. 162.

(*c*) *Durance, In goods of* (1872), L. R. 2 P. & D. 406; 41 L. J. P. 60; 26 L. T. 983.

(*d*) See Wms. on Exors. 10th ed.

1 Vict. c. 26, s. 20.
By tearing, burning, or otherwise destroying.
Doe v. *Harris*, per Sir H. J. Fust.

The following dicta from the case of *Doe* v. *Harris* (*e*), decided before the Wills Act, but subsequently cited and adopted by Sir H. J. Fust, as applicable to the 20th section (*f*), are cited in Williams on Executors (*g*). Patteson, J., said: "There must be, at all events, a partial burning of the instrument itself. I do not say that a quantity of words must be burnt; but there must be a burning of the paper on which the will is." Williams, J., said: "The will must be torn or burnt, and the question will always be, whether that was done with intention to cancel; how much should be burnt, or whether the will should be torn into more or fewer pieces, it is not necessary to lay down." Coleridge, J., said: "The question is put—Whether the will must be destroyed wholly, or to what extent? It is hardly necessary to say, that there must be such an injury with intent to revoke, as destroys the entirety of the will: because it may then be said that the instrument no longer exists as it was."

Material portion of will must be destroyed. Act must be done *animo revocandi*.

These dicta have since been followed in a variety of cases, and the result of the authorities appears to be, that, in order to effect the revocation of a will by "tearing, burning, &c.," (1) some material portion or portions of the will—as, *e.g.*, the signature of the testator or attesting witnesses—must be torn off or destroyed; (2) the act or acts must be done *animo revocandi;* and (3) the testator must

p. 101, citing Sugden's Essay, p. 46. See also *Hobbs* v. *Knight* (1836), 1 Curt. 768; *Morton, In goods of* (1887), 12 P. D. 141; 56 L. J. P. 96; 57 L. T. 501; *Clarke* v. *Scripps* (1852), 2 Robert. 563, 570, 575; *King, In goods of* (1852), 2 Robert. 403; *Coleman, In goods of* (1861), 2 S. & T. 314; 30 L. J. P. 170; 5 L. T. 119; *Bell* v. *Fothergill* (1871), L. R. 2 P. & D. 148; 23 L. T. 323; *Stephens* v. *Taprell* (1839), 2 Curt. 458; *Rose, In goods of* (1846), 4 Notes of Cas. 101; *Brewster, In goods of* (1860), 29 L. J. P. 69; *Cheese* v. *Lovejoy* (1877), 2 P. D. 251, 253; 46 L. J. P. 66; 37 L. T. 294.

(*e*) (1837), 6 A. & E. 209; *S. C.*, 2 Nev. & P. 615; 6 L. J. K. B. 84.

(*f*) *Hobbs* v. *Knight* (1836), 1 Curt. 768.

(*g*) 10th ed. p. 103.

1 Vict. c. 26, s. 20.

By tearing, burning, or otherwise destroying.

have completed the act or acts he intended to do for the purpose of revocation (*h*).

A testator left a will, apparently duly executed, and consisting of five sheets of paper fastened together. The first two sheets were in reality executed the year after the last three, and were not part of the document as originally executed, and there was no evidence as to the contents of the two missing sheets. The Court held that the destruction of the first two sheets effected the revocation of the three that remained (*i*), and as it is competent to a testator, under the 20th section, to revoke a part only of his will in the manner described, it often becomes a question, whether acts of destruction done by him *animo revocandi*, have operated an entire or only a partial revocation of the instrument before the Court (*k*).

Partial or complete revocation.

But if the testator do not actually complete the act of destruction, whatever it may be, that he intended to perform for the purpose of revoking his will, whether it be that he changes his mind before the act is complete, or that he is prevented by any other cause from completing it (*l*),

(*h*) See *Price* v. *Powell* (1858), 3 H. & N. 341; 27 L. J. Ex. 609; *Williams* v. *Tyley* (1859), Johns. 529; 5 Jur. N. S. 35; *Lewis, In goods of* (1858), 1 S. & T. 31; 27 L. J. P. 31; *Gullan, In goods of* (1858), 1 S. & T. 31; 27 L. J. P. 15; *Harris, In goods of* (1864), 3 S. & T. 485; 33 L. J. P. 181; 11 L. T. 276; *Bell* v. *Fothergill* (1871), L. R. 2 P. & D. 148; 23 L. T. 323; *Cheese* v. *Lovejoy* (1877), *supra*, note (*d*).

(*i*) *Leonard* v. *Leonard*, (1902) P. 243; 71 L. J. P. 117; 87 L. T. 145. See also *Treloar* v. *Lean* (1889), 14 P. D. 49; 58 L. J. P. 39; 60 L. T. 512.

(*k*) See *Lambert, In goods of* (1842), 1 Notes of Cas. 131; *Cooke, In goods of* (1846), 5 Notes of Cas. 390; *Clarke* v. *Scripps* (1852), 2 Robert. 563; *Woodward, In goods of* (1871), L. R. 2 P. & D. 206; 40 L. J. P. 17; 24 L. T. 40; *Williams* v. *Jones* (1849), 7 Notes of Cas. 106; *Maley, In goods of* (1887), 12 P. D. 134; 56 L. J. P. 112; 57 L. T. 50; *Christmas* v. *Whinyates* (1863), 3 S. & T. 81; 32 L. J. P. 73; 8 L. T. 801; *Treloar* v. *Lean* (1889), 14 P. D. 49; 58 L. J. P. 39; 60 L. T. 512.

(*l*) *Doe* v. *Perkes* (1820), 3 B. & A. 489; *Colberg, In goods of* (1840), 2 Curt. 832; *Elms* v. *Elms* (1858), 1 S. & T. 155; 27 L. J. P. 96; *Eeles, In goods of* (1863), 2 S. & T. 600; 32 L. J. P. 4; 7 L. T. 338; *Giles* v. *Warren* (1872), L. R. 2

or if he perform the act of destruction without the necessary *animus revocandi*, as if he be labouring under a mental incapacity (*m*), the instrument will not be thereby revoked; for "all the destroying in the world, without intention, will not revoke a will, nor all the intention in the world, without destroying; there must be the two" (*n*).

1 Vict. c. 26, s. 20. By tearing, burning, or otherwise destroying.

"A codicil is *primâ facie* dependent on the will, and before the passing of the Wills Act the principle was that a codicil fell to the ground with the will when the will was revoked, but that if it could be established that the testator intended the codicil to stand by itself notwithstanding the revocation of the will, the Court would give effect to the codicil. The cases on the point decided since the passing of the Wills Act are not very easy to reconcile. In *The goods of Savage* (*o*), Lord Penzance, following a previous decision of his own in *Black* v. *Jobling* (*p*), said that the Court could not in the teeth of the language of the 20th section of the Wills Act lay down the proposition that a codicil is revoked by the mere fact of the revocation of the will. He was of opinion that the matter had not been properly considered in the earlier decisions of *Clogstown* v. *Walcott* (*q*), and *Grimwood* v. *Cozens* (*r*), and having regard to the words of the Wills Act, which in his opinion were

Codicil, revocation of.

P. & D. 401; 41 L. J. P. 59; 26 L. T. 780; *Clarkson* v. *Clarkson* (1862), 2 S. & T. 497; 7 L. T. 218; *Coleman, In goods of* (1861), 2 S. & T. 314; 30 L. J. P. 170; 5 L. T. 119; *Thornton, In goods of* (1889), 14 P. D. 82; 58 L. J. P. 82; 61 L. T. 200.

(*m*) *Harris* v. *Berrall* (1859), 1 S. & T. 153; *Sprigge* v. *Sprigge* (1869), L. R. 1 P. & D. 608; 38 L. J. P. 4; 19 L. T. 462; *Benson* v. *Benson* (1871), L. R. 2 P. & D. 172, 176; 40 L. J. P. 1; 23 L. T. 709. Where a person when suffering from delirium tremens tore up his will, and on his recovery said that he was mad to do it, the Court held that there was no revocation: *Brunt* v. *Brunt* (1873), L. R. 3 P. & D. 37; 28 L. T. 368. See also *Beardsley* v. *Lacey* (1898), 67 L. J. P. 35; 78 L. T. 25.

(*n*) Per James, L.J., *Cheese* v. *Lovejoy* (1877), 2 P. D. 251, 253.

(*o*) (1870), L. R. 2 P. & D. 78; 39 L. J. P. 25; 22 L. T. 375.

(*p*) (1869), L. R. 1 P. & D. 685; 38 L. J. P. 74; 21 L. T. 298.

(*q*) (1843), 5 Notes of Cas. 623.

(*r*) (1859), 2 S. & T. 364.

1 Vict. c. 26, s. 20. By tearing, burning, or otherwise destroying. Codicil, revocation of.

imperative, the learned judge held that when a testator has once executed a testamentary paper, that paper will remain in force unless revoked in the particular manner mentioned in the 20th section; and in the case of *In the goods of Turner* (*s*), his Lordship decided to the same effect.

"But it may be doubted whether the judgment of his Lordship is not too widely expressed. In the subsequent case of *In the goods of Bleckley* (*t*), where, however, the codicil was on the same sheet of paper as the will, Sir James Hannen in his judgment said: "The question whether the deceased meant to revoke this codicil depends upon the intention to be gathered from the circumstances of the case, and they satisfy me that he meant to revoke both the will and codicil" (*u*).

Where the testator had obliterated the whole of a codicil, including his signature, by thick black marks, and at the foot of it had written the words, signed by himself and attested by two witnesses, "We are witnesses to the erasure of the above:" the codicil was held to have been revoked (*x*).

Signature of testator scratched out with knife.

It is sufficient revocation within the statute, if the signature of the testator is scratched out with a knife (*y*).

Cutting out clause appointing executors.

Where a clause appointing executors was found cut out of a will, it was held that the clause appointing executors was revoked, but not the rest of the will (*z*).

(*s*) (1873), L. R. 2 P. & D. 403; 27 L. T. 322. And see *Falle* v. *Godfray* (1889), 14 A. C. 70; 58 L. J. P. C. 61; 60 L. T. 120.

(*t*) (1883), 8 P. D. 169; 52 L. J. P. 102. See also *Gardiner* v. *Courthope* (1887), 12 P. D. 14; 56 L. J. P. 55; 57 L. T. 280.

(*u*) Wms. on Exors. 10th ed. pp. 113, 114.

(*x*) *Gosling, In goods of* (1886), 11 P. D. 79; 55 L. J. P. 27.

(*y*) *Morton, In goods of* (1887), 12 P. D. 141; 56 L. J. P. 96; 57 L. T. 501. A will which after execution had remained in the custody of the deceased, was found after his death with the attesting witnesses' signatures struck through with a pen, and the testator's signature apparently scratched with a knife, but still legible. Held, that there was no revocation: *Godfrey, In goods of* (1893), 69 L. T. 22.

(*z*) *Maley, In goods of* (1887), 12 P. D. 134; 56 L. J. P. 112; 57 L. T. 500.

A testator has no power to direct a third person to destroy his will, except *in his presence*, as provided by the statute (*a*). 1 Vict. c. 26, s. 20.

Where a testatrix, being under an erroneous impression that a codicil had not been duly executed, directed it to be torn up and sent to her solicitor to be re-copied, but died before she could re-execute it (*b*); and where the will of a testatrix was destroyed in her presence, but without her consent or authority, and subsequently, the testatrix, though pressed to do so, refused to make a new will, saying she could not bring her mind to do it (*c*); the Court held that the documents had not been revoked. Destruction by third person in presence of testatrix without authority.

But if a testator employs another person to convey his meaning in technical language, and that other person (without fraud) makes a mistake, the testator will be as much bound by it as though he had employed the language himself. A lady left two wills and a codicil to the first will. The second will, which disposed only of a small policy of insurance, was prepared for her on a printed form by one of her executors. The form commenced with a clause revoking all previous testamentary dispositions; but when this was read over to her she objected to it, saying she did not wish to revoke her first will and codicil. The person who prepared the will assured her that as it only related to the insurance policy the words of revocation would not apply to her former testamentary dispositions, and that to make an erasure might invalidate the will. Being satisfied by this assurance she executed the will. The Court held that the first will and codicil were revoked (*d*). Revocatory clause introduced by third person.

By sect. 21, "No obliteration, interlineation, or other 1 Vict. c. 26, s. 21.

(*a*) Wms. on Exors. 10th ed. p. 105; *Dadds, In goods of* (1857), Dea. & Sw. 290.

(*b*) *Thornton, In goods of* (1889), 14 P. D. 82; 58 L. J. P. 82; 61 L. T. 200.

(*c*) *Mills* v. *Millward* (1890), 15 P. D. 20; 59 L. J. P. 23; 61 L. T. 651.

(*d*) *Collins* v. *Elstone*, (1893) P. 1; 62 L. J. P. 26; 67 L. T. 621.

1 Vict. c. 26, s. 21. Obliterations, interlineations, &c.

alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of a will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will" (*e*).

Obliterations, interlineations, &c., *animus revocandi*.

Obliterations and alterations, in order to operate a revocation under this section, must have been made *animo revocandi*, and not merely in substitution; and further, in order to bring an unattested alteration or obliteration within the exception contained in the section, it must be so complete, that none of the parts obliterated can be distinguished upon the face of the will by the aid of magnifying glasses, or evidence of that nature, not by extrinsic evidence (*f*).

Dependent relative revocation.

"The principle that the effect of the obliteration, cancelling, &c., depends upon the mind with which it is done, having been pursued in all its consequences, has introduced the doctrine of dependent relative revocations, in which the act of cancelling, &c., being done with reference to another act, meant to be an effectual disposi-

(*e*) See Wms. on Exors. 10th ed. pp. 106—112.

(*f*) *Short* v. *Smith* (1803), 4 East, 419; 1 Smith, 96; *Soar* v. *Dolman* (1841), 3 Curt. 121; *Townley* v. *Watson* (1844), 3 Curt. 769; *Bedford, In goods of* (1847), 5 Notes of Cas. 188; *Harris, In goods of* (1859), 1 S. & T. 536; *James, In goods of* (1859), 1 S. & T. 238; *Parr, In goods of* (1860), 29 L. J. P. 70; *M'Cabe, In goods of* (1873), L. R. 3 P. & D. 94; 42 L. J. P. 79; 29 L. T. 249; *Horsford, In goods of* (1875), L. R. 3 P. & D. 211; 44 L. J. P. 9; 31 L. T. 553; *Greenwood, In goods of*, (1892) P. 7; 61 L. J. P. 56; 66 L. T. 61.

tion, will be a revocation or not, according as the relative act be efficacious or not" (*g*).

1 Vict. c. 26, s. 21. Dependent relative revocation.

So, if a testator does some act which, under ordinary circumstances, would amount to a revocation of a testamentary paper; intending to revoke it, not because he desires to die intestate, but because he is under the erroneous impression that by so doing he will validate and bring into force an earlier testamentary document (*h*), or is under the erroneous impression that the document to which he does the act is useless (*i*), the doctrine of depen-

(*g*) Wms. on Exors. 10th ed. p. 110.

(*h*) *Onions* v. *Tyrer* (1710), 2 Vern. 742; Pre. Ch. 149; Gilb. Eq. R. 130; 1 P. Wms. 343. See also *Burtenshaw* v. *Gilbert* (1775), Cowp. 52, in Lord Mansfield's judgment; 1 Saund. 280, b, c; note to *Duppa* v. *Mayo* (1668), 1 Saund. 277 (e); *Perrott* v. *Perrott* (1811), 14 East, 440; *Thynne* (*Lord John*) v. *Stanhope* (1822), 1 Add. 53; *Hyde* v. *Hyde* (1700), 1 Eq. Cas. Abr. 409; *Hyde* v. *Mason*, Vin. Abr. Devise (R. 2), p. 17; *nomine Limbery* v. *Mason* (1710), Comm. Rep. 451; *Goodright* v. *Glazier* (1765), 4 Burr. 2510; *Winsor* v. *Pratt* (1821), 2 Brod. & B. 650; 5 Moo. 48; *Applebee, In goods of* (1828), 1 Hagg. 143; *De Bode, In goods of* (1846), 5 Notes of Cas. 189; *Eeles, In goods of* (1863), 2 S. & T. 600; 32 L. J. P. 4; 7 L. T. 338; *Short* v. *Smith* (1803), 4 East, 419; 1 Smith, 96; *Kirke* v. *Kirke* (1828), 4 Russ. Ch. Cas. 435; 6 L. J. (O. S.) Ch. 143; *Locke* v. *James* (1843), 11 M. & W. 901; *Middleton, In goods of* (1865), 3 S. & T. 583; 34 L. J. P. 16; 11 L. T. 684; *Dancer* v. *Crabb* (1873), L. R. 3 P. & D. 98; 42 L. J. P. 53; 28 L. T. 914; *Powell* v. *Powell* (1866), L. R. 1 P. & D. 209; 35 L. J. P. 100; 14 L. T. 800, followed in *Cossey* v. *Cossey* (1900), 69 L. J. P. 17; 82 L. T. 203; *Ilchester* (*Lord*), *Ex parte* (1803), 14 East, 440; 6 R. R. 138; *Scott* v. *Scott* (1859), 1 S. & T. 258; *Dickinson* v. *Stidolph* (1861), 11 C. B. N. S. 341; *Williams* v. *Tyley* (1859), Johnson, 535, per Wood, V.-C.; *Dickinson* v. *Swatman* (1861), 30 L. J. P. 84; *Weston, In goods of* (1869), L. R. 1 P. & D. 633; 38 L. J. P. 53; 20 L. T. 330; *M'Cabe, In goods of* (1873), L. R. 3 P. & D. 94; 42 L. J. P. 79; 29 L. T. 249; and for cases where the revocation was held to be absolute and not dependent, see *Mitcheson, In goods of* (1863), 32 L. J. P. 202; *Eckersley* v. *Platt* (1867), L. R. 1 P. & D. 281; 36 L. J. P. 7; 15 L. T. 327; *Gentry, In goods of* (1873), L. R. 3 P. & D. 80; 42 L. J. P. 49; 28 L. T. 480.

(*i*) *Clarkson* v. *Clarkson* (1862), 2 S. & T. 497; 31 L. J. P. 143; 6 L. T. 506. See also *Thornton, In goods of, supra*, note (*b*).

1 Vict. c. 26, s. 21. Dependent relative revocation.

dent relative revocation will apply, and such testamentary paper will not thereby be revoked.

Erroneous impression on testator's mind may be of law or fact.

It makes no difference whether the erroneous impression operating on the mind of the testator be one of law or of fact (*k*). If "it is evident that a testator, though using the means of revocation, could not intend it for any other purpose than to give effect to another disposition, though, if it had been a mere revocation, it would have had effect, yet, the object being only to make way for another disposition, if the instrument cannot have that effect, it shall not be a revocation" (*l*). "But where the second disposition fails for want of capacity in the legatee to take, it appears to be established—though it has been thought difficult to make a satisfactory distinction—that the revocation would be effectual" (*m*).

The following are some of the more recent cases on the subject of dependent relative revocation :—

Recent case on dependent relative revocation.

A testator, on the execution of a will in 1895, caused a will of 1882 to be cancelled under the erroneous belief that funds comprised in a settlement of 1855 would, in the absence of certain provisions in the will of 1882, be divided equally amongst the children of his first marriage. In 1896 he executed a fresh will and revoked the will of 1895, and later in 1896 he executed two codicils, but the settled funds were not mentioned in any of the documents of 1896. Held, that the will of 1882 had never been revoked (*n*).

In order to apply the doctrine of dependent relative revocation, it is not necessary that at the time of the actual revocation there should be in existence an earlier valid document which the testator intends to revive. The doctrine may extend to cases where there is an intention,

(*k*) See Wms. on Exors. 10th ed. p. 112.

(*l*) Per Lord Alvanley in *Ilchester (Lord)*, *Ex parte* (1803), 7 Ves. 372, 379. See Wms. on Exors. 10th ed. p. 112.

(*m*) See Wms. on Exors. 10th ed. p. 113.

(*n*) *Stamford* v. *White*, (1901) P. 46; 70 L. J. P. 9; 84 L. T. 269.

not in fact fulfilled, to execute a fresh testamentary paper (*o*). Dependent relative revocation.

When a will has been proved to have been once duly executed, and at the death of the testator cannot be found, the presumption is that it was destroyed *animo revocandi*, but this presumption may be rebutted by evidence of the testator's intention to adhere to his will. Lost will, presumption as to revocation.

By sect. 22, "No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown" (*p*). 1 Vict. c. 26, s. 22. Revival.

Even if a codicil refers to a will with the intention of reviving it, and it turns out that such will has been entirely burnt or destroyed by the testator *animo revocandi*, the codicil cannot effect its revival (*q*).

The following is a recent decision on the same point. Where a testator refers by mistake in a codicil to a will which has not only been revoked but actually at the time of the execution of such codicil ceased to exist, the Court may, if satisfied that such reference is a pure mistake, and that the testator intended to refer to an existing will, grant probate of the codicil, omitting the words of reference which have been inserted by mistake. But it is other-

(*o*) *Dixon* v. *Treasury Solicitor*, (1905) P. 42; 74 L. J. P. 33; 92 L. T. 427.

(*p*) See on the subject of the revival or republication of wills, Wms. on Exors. 10th ed. pp. 140—147.

(*q*) Wms. on Exors. 10th ed. p. 144, note (*m*), citing *Steele, In goods of* (1868), L. R. 1 P. & D. 575; 37 L. J. P. 72 n.; 19 L. T. 91; *Hale* v. *Tokelove* (1852), 2 Rob. 318; *Newton* v. *Newton* (1862), 5 L. T. 218; *Rogers* v. *Goodenough* (1862), 2 S. & T. 342; 31 L. J. P. 49; 5 L. T. 719.

1 Vict. c. 26, s. 22. Revival.

wise if the will referred to by mistake is in existence at the time of the execution of the codicil (*s*).

Intention to revive must appear on face of document, or be clearly implied by some expression.

The intention to revive a revoked will must appear on the face of the codicil, either by express words referring to a will as revoked and importing an intention to revive the same, or by a disposition of the testator's property inconsistent with any other intention, or by some other expression conveying to the mind of the Court, with reasonable certainty, the existence of the intention. Since the passing of the statute a will cannot be revived by mere implication. References in codicils to revoked wills by their dates are insufficient to revive them, there being no evidence on the faces of such codicils of an intention to revive the wills so referred to (*t*).

The *intention to revive* must appear from the contents of the codicil itself, and cannot be satisfied by any act *dehors* the codicil, as by physical annexation, *e.g.*, tying the will and codicil together (*u*).

Reference to prior will by mistake.

A reference to a prior will by date may be shown to be a mistake by internal evidence gathered from the contents of the codicil read in the light of surrounding circumstances (*x*).

Where a codicil, by mistake as to the date of a prior will, refers to an earlier will than that intended to be

(*s*) *Reade, In goods of*, (1902) P. 75; 71 L. J. P. 45; 86 L. T. 258.

(*t*) See *Steele, In goods of* (1868), L. R. 1 P. & D. 575; 37 L. J. P. 72 n.; 19 L. T. 91; *Payne* v. *Trappes* (1846), 1 Robert. 583; *Reynolds, In goods of* (1873), L. R. 3 P. & D. 35; 42 L. J. P. 20; 28 L. T. 144; *Dennis, In goods of*, (1891) P. 326; *Ince, In goods of* (1877), 2 P. D. 111; 46 L. J. P. 30; 36 L. T. 519; *Goodenough, In goods of* (1860), 2 S. & T. 141; *M'Cabe, In goods of* (1862), 2 S. & T. 478; 31 L. J. P. 190; 6 L. T. 474; *Burton* v. *Newbery* (1876), L. R. 1 Ch. D. 234; 45 L. J. Ch. 202; 34 L. T. 15; *Da Silva, In goods of* (1861), 2 S. & T. 315; 30 L. J. P. 171; 5 L. T. 140. Destruction of the revoking instrument is not sufficient: *Major* v. *Williams* (1838), 3 Curt. 432.

(*u*) *Marsh* v. *Marsh* (1861), 1 S. & T. 528; 30 L. J. P. 77.

(*x*) *Wilson, In goods of* (1867), L. R. 1 P. & D. 269, 575, 582; *May, In goods of* (1867), L. R. 1 P. & D. 577; *Whatman, In goods of* (1865), 34 L. J. P. 17.

referred to, the codicil will not revive the earlier will to which it so refers (*y*); but where the codicil makes reference to the provisions of the earlier will, such earlier will is confirmed and will revive; and the mistake cannot be corrected otherwise than by admitting the earlier will to probate, together with the codicil and the later will (*z*).

1 Vict. c. 26, s. 22. Revival, what amounts to.

A testatrix in 1889 made a will, and in 1892 instructed her solicitor to prepare a codicil, which she took away with her, but never executed. Later in 1892 she executed a fresh will, prepared by a different solicitor, revoking the former will. In 1893 she executed a codicil, prepared by her original solicitor, who was in ignorance of the existence of the second will, and believed that the codicil to the first will had been duly executed; this codicil purported to be a second codicil to the will of 1889, and to confirm "my said will and the first codicil thereto": Held, that the codicil by its language revived the earlier will, and that both the wills, together with the codicil, must be admitted to probate (*a*).

(*y*) *Ince, In goods of* (1877), *supra*, note (*t*).

(*z*) *Stedham, In goods of* (1881), 6 P. D. 205; 50 L. J. P. 75; 45 L. T. 192; *Dyke, In goods of, Ibid.*

(*a*) *Chilcott, In goods of*, (1897) P. 223; 66 L. J. P. 108; 77 L. T. 372. See also the following recent cases on this subject: *Carritt, In goods of* (1892), 66 L. T. 379; *Courtenay, In goods of* (1892), 27 L. R. Ir. 507; *Rendle, In goods of* (1899), 68 L. J. P. 125; *Green, In goods of* (1899), 79 L. T. 738; *French* v. *Hoey* (1899), 2 Ir. R. 472; *Reade, In goods of*, (1902) P. 75; 71 L. J. P. 45; 86 L. T. 258.

CHAPTER IX.

OF THE GRANTS ISSUED BY THE PROBATE DIVISION FOR THE PURPOSE OF ENABLING EXECUTORS AND ADMINISTRATORS TO DEAL WITH THE PERSONAL ESTATE OF DECEASED PERSONS.

Executors and administrators must be armed with authority of Probate Division.

NEITHER an executor appointed by the will of a testator, nor the person or persons entitled to the personal estate of an intestate, have, generally speaking, any legal power to deal with such estate until they are armed with the authority of the Probate Division, which is conferred upon them by a "*grant*," which issues out either of the principal registry at Somerset House, or one of the district registries.

These grants may be divided into three principal heads:—

1. Probate.
2. Letters of administration with the will annexed.
3. Letters of administration pure and simple.

Grant of probate, what is.

The grant of probate issues only where there is a will by which an executor is appointed either directly or by necessary implication.

It is defined to be a copy of the will by which the executor is appointed, certified under the seal of the Court.

"Nothing but the probate (or letters of administration with the will annexed, when no executor is therein appointed or the appointment of executor fails) . . . or other proof tantamount thereto of the admission of the will in the Probate Division, is legal evidence of the will in any question respecting personalty."

"As regards real estate in the case of the will of a person dying after the commencement of the Land Transfer

Act, 1897 (1 Jan., 1898), by sect. 1, sub-sect. 3, of that Act, 'Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.' By sub-sect. 4 the expression '*real estate*' in that part of the Act is not to be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant. Having regard to the provisions of this Act, and of the Finance Act, 1894, it would seem that the will of a person dying after the commencement of the Land Transfer Act, 1897, disposing of real estate only, and not appointing an executor, should now be proved in the Probate Division."

Real estate only—grant of probate.

"The probate is, however, merely operative as the authenticated evidence, and not at all as the foundation of the executor's title; for he derives all his interest from the will itself, and the property of the deceased vests in him from the moment of the testator's death. Hence the probate, when produced, is said to have relation to the time of testator's death" (*a*).

Grants of probate.

"A testament may be proved in two ways: either in Common Form, or by Form of Law; which latter mode is also called the Solemn Form, and, sometimes, proving *per testes*" (*b*).

By granting probate in common form on affidavits, the Court does not preclude anyone interested in the property from contesting the paper at a future period.

In common form, what is.

Probate in solemn form is, with some exceptions, conclusive on all who are parties to the proceedings or cognizant of them. The exceptions to its conclusive effect are generally where the decree has been obtained by fraud or collusion, or where a later will has been discovered.

In solemn form, what is.

(*a*) Wms. on Exors. 10th ed. pp. 213, 214.

(*b*) *Ibid.* p. 238, citing Swinb. Pt. XVI. s. 14, pl. 1; Godolph. Pt. I. c. 20, s. 4.

Grant of administration with the will annexed, what is.

The grant of letters of administration with the will annexed is made when there is a will in existence, but no executor is therein appointed, or the appointment of executor fails.

Quasi intestatus.

"It often happens that the deceased, although he makes a will, appoints no executor, or else the appointment fails: in either of which events, he is said to die *quasi intestatus*. The appointment of executor fails (1) where the person appointed refuses to act. (2) Where the person appointed dies before the testator, or before he has proved the will; or where" (*from any cause*) "he is incapable of acting. (3) Where the executor dies intestate, after having proved the will, but before he has administered all the personal estate of the deceased. In all these cases, as well as where no executor is appointed, the Court must grant an administration, which is called administration with the will annexed; and in the last instance it is also called administration *de bonis non*" (*c*).

Grant of simple administration, what is.

The grant of letters of administration pure and simple is made where the deceased has died wholly intestate as to his personal estate (*d*).

Administrators, whether with a will annexed or in cases of complete intestacy, being appointed by the Court after the death of the deceased, and therefore entirely without his or her privity, are required to give security in the shape of a bond to the President, with sureties (except by special leave) pledging them to duly administer the estate. On the other hand, an executor is nominated by, and clothed with the authority of the deceased. Therefore where a grant of "*probate*" is made, as distinguished from a grant of "*administration*," no bond or other security is required from the executor (*e*).

(*c*) Wms. on Exors. 10th ed. p. 370.

(*d*) See *Ibid.* pp. 312 *et seq.*

(*e*) For all details with respect to the grants that form the subject of this Chapter, see *post*, Pt. II., Practice.

CHAPTER X.

OF THE APPOINTMENT OF EXECUTORS (*a*).

Executor, meaning of term.

"THE word executor, as the term is at present accepted, may be defined to be the person to whom the execution of a last will and testament is, by the testator's appointment, confided (*b*). 'To appoint an executor,' says Swinburne (*c*), 'is to place one in the stead of the testator, who may enter to the testator's goods and chattels, and who hath action against the testator's debtors, and who may dispose of the same goods and chattels towards the payment of the testator's debts and performance of his will.'

"The bare nomination of an executor, without giving any legacy, or appointing anything to be done by him, is sufficient to make it a will, and as a will it is to be proved" (*d*).

Executor, who may be.

Generally speaking, all persons who are capable of making wills, and some others besides, are capable of being made executors. From the earliest time it has been a rule, that every person may be an executor saving such as are expressly forbidden.

The sovereign.

The sovereign may be an executor, but, if appointed, he nominates such persons as he thinks fit to officiate in the execution of the will, against whom such as have cause of action may bring their suits (*e*).

Corporations.

A corporation sole may be nominated executor, and can take a grant of probate in the same manner as an indi-

(*a*) See on this subject generally, Wms. on Exors. 10th ed. pp. 157—207.

(*b*) *Ibid.* p. 157, citing 2 Black. Comm. 503; *Farrington* v. *Knightley* (1719), 1 P. Wms. 548; Toller, 30.

(*c*) *Ibid.*, citing Swinb. Pt. IV. s. 2, pl. 2.

(*d*) *Ibid.*, citing *Brownrigg* v. *Pike* (1882), 7 P. D. 61; 51 L. J. P. 29; 46 L. T. 821; *Lancaster, In goods of* (1860), 1 S. & T. 464; 29 L. J. P. 155.

(*e*) *Ibid.* p. 158.

Executor, who may be.

vidual (*f*); but if a corporation aggregate be so nominated, they cannot take a grant of probate, but may appoint persons styled *syndics*, to whom a grant will be made of administration with the will annexed (*g*).

Firm of partners.

Where a firm was appointed executors, it was held that the appointment was not of the firm collectively, but of the individuals who composed it, and therefore each of the members was entitled to be joined in the grant of probate with the other executors (*h*).

Alien.

Since the passing of the Naturalization Act, 1870 (33 & 34 Vict. c. 14), an alien, with respect to his eligibility for the office of executor, stands in the same position as a natural-born British subject (*i*).

Infant.

An infant may be appointed executor; but if such be appointed sole executor, by 38 Geo. 3, c. 87, s. 6, he is altogether disqualified from exercising his office during his minority, and administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the Court shall think fit, until such infant shall have attained the age of twenty-one years (*k*).

Child *in ventre sa mère.*

"Even a child *in ventre sa mère* may be appointed, and if the mother bring forth two or three children at one birth, they are all to be admitted executors" (*l*).

Feme covert.

Formerly a married woman could not by the law of England take upon her the office of executrix or administratrix without the consent of her husband; but now by

(*f*) Godolph. Pt. II. c. 6; Wentw. Off. Ex. 14th ed. p. 39; *Haynes, In goods of* (1842), 3 Curt. 75. See also Wms. on Exors. 10th ed. p. 159.

(*g*) 3 Bac. Abr. by Gwillim, p. 5, tit. Exors. A 2; Toller, 30, 31; *Darke, In goods of* (1860), 1 S. & T. 516; *Martin, In goods of* (1904), 90 L. T. 64; 20 Times L. R. 257; 29 L. J. P. 71; 2 L. T. 74. See also Wms. on Exors. 10th ed. p. 159.

(*h*) *Fernie, In goods of* (1848), 6 Notes of Cas. 657. See also Wms. on Exors. 10th ed. p. 159.

(*i*) 33 & 34 Vict. c. 14. See Wms. on Exors. 10th ed. p. 159.

(*k*) Wms. on Exors. 10th ed. p. 159. See also *Stewart, In goods of* (1875), L. R. 3 P. & D. 244; 44 L. J. P. 37; 33 L. T. 72.

(*l*) *Ibid.* p. 159, citing Godolph. Pt. II. c. 9, s. 1.

sect. 1, sub-sect. 2, of the Married Women's Property Act, 1882, it is provided that "a married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property . . . as if she were a *feme sole*."

Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2.

And by sect. 24, the word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix.

Ibid., sect. 24.

And by sect. 18 a married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, may act in such office as if she were a *feme sole*, for purposes of action, transfer of stock, &c., without any consent on the part of her husband (*m*).

Ibid., sect. 18. Married woman executrix or administratrix.

"These sections would seem to apply to any married woman whether married before or after the commencement of the Act. It has therefore become unnecessary with respect to cases falling within the above Act to consider the question as to the consent of the husband, as the wife as such executrix or administratrix now acts independently of him . . . as if she were a *feme sole*" (*n*).

Applies to all married women.

Persons convicted of felony, outlaws, and *à fortiori* persons in mean and insolvent circumstances, may all be appointed executors, though the Chancery Division will in certain cases interfere for the protection of the estate, by appointing a receiver, or compelling a bankrupt executor to give security before entering upon the duties of his office (*o*).

Persons attaint, outlaws, &c., &c.

The Probate Division, in common with the other Divisions of the High Court of Justice, has power to grant injunctions and to appoint receivers by virtue of sect. 25 (sub-sect. 8) of the Judicature Act, 1873 (*p*); so where an executor, before obtaining probate and without the consent

Injunction granted in Probate Division.

(*m*) See Wms. on Exors. 10th ed. p. 160.

(*n*) *Ibid.* p. 161. Since this Act it is not necessary that the husband should join in the administration bond: *Ayres, In goods of* (1883), 8 P. D. 168; 52 L. J. P. 98.

(*o*) See *Ibid.* pp. 161—163.

(*p*) See *Ibid.* pp. 1684, 1685.

Executor intermeddling without probate.

of his co-executor, intermeddled with assets, and made preparations to sell, the Probate Division granted leave to the co-executor to issue a writ for an injunction and for a receiver (*q*).

Executor convicted of felony.

Even an executor convicted of felony after his testator's death is entitled to maintain an action in the Probate Division with a view of establishing the validity of the will by which he is appointed (*r*).

Idiots and lunatics.

Persons of unsound mind are incapable of being executors, and if an executor become *non compos* after having taken probate, the Court may set him aside, and grant administration to a third party (*s*).

Appointment of executor must be testamentary.

"An executor can derive his office from a testamentary appointment only.

"His appointment may be either express or constructive, in which case he is usually called executor according to the tenor; for, although no executor be expressly nominated in the will by the word executor, yet if by any word or circumlocution the testator recommend, or commit to one or more the charge and office, or the rights which appertain to an executor, it amounts to as much as the ordaining or constituting him or them to be executors" (*t*).

Executor nominate.

The only persons entitled to prove a will are the executors, who are of two kinds—(1) *executors nominate*, or such as are appointed in express terms, and (2) *executors*

(*q*) *Moore, In goods of* (1888), 13 P. D. 36; 57 L. J. P. 37; 58 L. T. 386. See also *Henderson, Re*, 2 Times L. R. 322; *Salter* v. *Salter*, (1896) P. 291; 65 L. J. P. 117; 75 L. T. 7, cited Wms. on Exors. 10th ed. pp. 1614, 1685. (The last case is incorrectly cited in Wms. on p. 1614 as "Slater," but correctly cited on p. 1685.)

(*r*) *Smethurst* v. *Tomlin* (1851), 2 S. & T. 143; 3 L. J. P. 269; 4 L. T. 712. Nor will the Court pass over an executor by reason of his bad character only: *Samson, In goods of* (1873), L. R. 3 P. & D. 48; 42 L. J. P. 59; 28 L. T. 478.

(*s*) See Wms. on Exors. 10th ed. p. 164.

(*t*) Wms. on Exors. 10th ed. p. 165, citing Swinb. Pt. IV. s. 4, pl. 3; Godolph. Pt. II. c. 5, s. 2; Wentw. Off. Ex. 14th ed. p. 20; *Manly, In goods of* (1862), 3 S. & T. 56; 31 L. J. P. 198; 7 L. T. 200.

according to the tenor, or such as are appointed by inference from the contents of a testamentary document. Executor according to the tenor.

An executor can derive his office only from a testamentary appointment, and such appointment may be (1) *absolute*, viz., when it extends over the whole of the testator's effects and is without limitation in point of time; or it may be (2) *qualified*, viz., when it is created conditionally, or is limited "as to the time or place wherein, or the subject matter whereon, the office is to be exercised." In the first case the GRANT made by the Court will be GENERAL, and in the second LIMITED. But whether the appointment be in express terms, or by inference, there must be no uncertainty left in the mind of the Court whether such appointment has really been made or not.

The following are examples of cases in which persons have been held to have been appointed *executors according to the tenor*. What amounts to appointment of.

Where the will contains a direction to certain persons to pay debts, funeral expenses, and expenses of probate (*u*). Direction to pay debts, funeral expenses, &c.

Where a testator gave to two persons all his real and personal estate, to apply the same, after payment of debts, to the payment of legacies (*x*).

And where, after the death of a son, who had been appointed one of the executors of his father's will, the testator executed a codicil wherein he appointed B. as "*trustee*" in the place of his said son (*y*).

Where a testatrix duly executed a testamentary paper in the form of a letter commencing "My dear E." and containing full information as to the amount of her property, with full directions as to how she wished it to be disposed Testamentary paper in form of letter.

(*u*) *Fry, In goods of* (1827), 1 Hagg. 80. See also *Pickering* v. *Towers* (1756), 2 Cas. temp. Lee, 401; *Adamson, In goods of* (1874), L. R. 3 P. & D. 253.

(*x*) *Bell, In goods of* (1879), 4 P. D. 85; 40 L. T. 659. See also *Baylis, In goods of* (1866), L. R. 1 P. & D. 21; 35 L. J. P. 15; 13 L. T. 446; *Chappell, In goods of* (1868), 37 L. J. P. 32; 17 L. T. 618.

(*y*) *Lush, In goods of* (1888), 13 P. D. 20; 57 L. J. P. 23; 58 L. T. 684.

Executor according to the tenor.

Appointment of, what amounts to.

of, and concluding with these words: "I know of nothing else, my dear E., to trouble you with, and trust that this will not involve you in much" (*z*).

Where a will contained this clause, "I appoint my sister my executrix, only requesting that my nephews will kindly act for and with this dear sister" (*a*).

Where a testator in his will said, "I appoint P. and W.," but did not state in what capacity he appointed them, but bequeathed legacies to "each of my executors," and gave the residue to "my said executors," with certain directions as to the disposal of it (*b*).

Where a testator had neither by his will nor codicils made any direct appointment of executors, but had appointed four persons as his trustees, and the will contained directions to "*my executors*" to pay his debts and funeral and testamentary expenses, and he had referred to them indiscriminately, sometimes as "*trustees*," and sometimes as "*executors*" (*c*).

The following are some of the more recent cases in which persons have been held entitled to a grant of probate as executors according to the tenor.

Where a testatrix appointed "trustees" and expressed a wish that they should pay her funeral and other debts (*d*), and where a testator nominated trustees "to carry out this my will" (*e*).

Where a testator appointed H. E. "to hold and administer in trust all my estate well known to the said H. E." (*f*), and where a testator having directed certain

(*z*) *Manly, In goods of* (1862), 3 S. & T. 56; 31 L. J. 198; 7 L. T. 200.

(*a*) *Brown, In goods of* (1877), 2 P. D. 110; 46 L. J. P. 31; 36 L. T. 519.

(*b*) *Bradley, In goods of* (1883), 8 P. D. 215; 52 L. J. P. 101.

(*c*) *Leven, In goods of* (1890), 15 P. D. 22; 59 L. J. P. 35.

(*d*) *Wilkinson, In goods of*, (1892) P. 227; 61 L. J. P. 134; 67 L. T. 328.

(*e*) *Russell, In goods of; Laird, In goods of*, (1892) P. 380; 62 L. J. P. 15; 67 L. T. 504. See also *Allam, In goods of* (1892), 66 L. T. 382.

(*f*) *Way, In goods of*, (1901) P. 345; 71 L. J. P. 13; 85 L. T. 643.

things to be done "by my executors hereinafter named," failed to name any persons as executors, but appointed his widow and two of his sons as "trustees," and gave certain bequests to the latter "for their services" (*g*), also where a testatrix simply desired J. G. to pay all her just debts and bequeathed her whole estate to her niece P. M. (*h*).

Executor according to the tenor.

Appointment of, what amounts to.

On the other hand, a direction to a person to pay debts or funeral expenses, not out of the general estate, but out of a particular fund, will not constitute him an executor according to the tenor (*i*).

What is not.

Direction to pay debts out of particular fund.

Unless the Court can gather from the words of a will that a person named trustee therein is required to pay the debts of the deceased, and generally to administer his estate, it will not grant probate to him as executor according to the tenor (*k*).

Trustee.

In other words, if a person be appointed trustee by a will, and the duties created by the will are such as would properly devolve upon a trustee, rather than upon an executor, such an appointment will not constitute him an executor according to the tenor (*l*).

A universal legatee of a testamentary paper is not en-

Universal legatee.

(*g*) *Kirby, In goods of*, (1902) P. 188; 71 L. J. P. 116; 87 L. T. 141.

(*h*) *Cook, In goods of*, (1902) P. 114; 71 L. J. P. 49; 86 L. T. 537. See also *Nussey, In goods of* (1898), 78 L. T. 169.

(*i*) *Toomy, In goods of* (1865), 3 S. & T. 562; 34 L. J. P. 3.

(*k*) *Punchard, In goods of* (1872), L. R. 2 P. & D. 369; 41 L. J. P. 25; 26 L. T. 526.

(*l*) *Ibid.* See also *Lowry, In goods of* (1874), L. R. 3 P. & D. 157; 43 L. J. P. 34; 30 L. T. 695; *Jones, In goods of* (1862), 2 S. & T. 155; 31 L. J. P. 199; 4 L. T. 477; *Fraser, In goods of* (1870), L. R. 2 P. & D. 183; 40 L. J. P. 9; 24 L. T. 72; *Stewart, In goods of* (1875), L. R. 3 P. & D. 244; 44 L. J. P. 37; 33 L. T. 72. Where a testator appointed trustees and executors of his will, and by codicil cancelled "the appointment of trust" and appointed other persons in their stead, the trustees and executors appointed by the will having renounced, the Court refused to grant probate of the will to the persons appointed by the codicil, but made a grant to them of administration with the will annexed: *Hartley, In goods of* (1895), 11 R. 592.

Executor according to the tenor.

titled to probate as executor according to the tenor, but only to a grant of administration with the will annexed (*m*).

Appointment of, what is not.

Where deceased left one sovereign to the "*executor and witness*" of her will and then named nobody executor, but opposite the names of the attesting witnesses were the words "*executors and witnesses*," the Court held there was no appointment of executors (*n*).

Appointment void for uncertainty.

And appointments of executors "with any two of my sons" where the testator left three sons (*o*), and of "*one of my sisters sole executrix*" where the testator left three sisters, were held to be void for uncertainty (*p*).

And an appointment in a will, in which there was no residuary clause, of the testator's daughter "executrix for all property whatsoever and wheresoever, not named in the will," was held not to constitute her executrix (*q*).

Where a second will appoints a fresh executor, if the wills are not inconsistent, probate may be granted to both executors (*r*).

Revocation of, by implication.

But where the testator by his will appointed two executors, and by a codicil appointed his wife "*sole executrix*," the Court held that the appointment of the two executors in the will was revoked (*s*).

But a re-appointment in a subsequent will of one of the executors named in a former will is no revocation of the

(*m*) *Oliphant, In goods of* (1851), 1 S. & T. 525; 30 L. J. P. 82; 1 L. T. 446.

(*n*) *Woods, In goods of* (1868), L. R. 1 P. & D. 556; 37 L. J. P. 23; 17 L. T. 583.

(*o*) *Baylis, In goods of* (1862), 2 S. & T. 613; 31 L. J. P. 119; 7 L. T. 251.

(*p*) *Blackwell, In goods of* (1877), 2 P. D. 72; 46 L. J. P. 29; 36 L. T. 413.

(*q*) *Wakeham, In goods of* (1872), L. R. 2 P. & D. 395; 41 L. J. P. 46; 27 L. T. 214.

(*r*) *Leese, In goods of* (1862), 2 S. & T. 442; 31 L. J. P. 169; 5 L. T. 848; *Graham, In goods of* (1863), 3 S. & T. 69; 32 L. J. P. 113; 8 L. T. 610; *Geaves* v. *Price* (1863), 3 S. & T. 71; 32 L. J. P. 113; 8 L. T. 610; *Morgan, In goods of* (1867), L. R. 1 P. & D. 323; 36 L. J. P. 64; 16 L. T. 181.

(*s*) *Lowe, In goods of* (1864), 3 S. & T. 478; 33 L. J. P. 155.

appointment of executors in the first will (*t*). Where, however, in a similar case, the word "sole" was used in a subsequent will, the first appointment was held to be revoked (*u*).

Appointment of executor. What amounts to.

Where a testator appointed "*Percival* —— *of Brighton, the father*," one of his executors, the Court admitted parol evidence to show who was meant (*x*).

Ambiguity removed by parol evidence.

And where a codicil referred to a will by date, in which an appointment of an executor was written on an erasure, the Court admitted parol evidence of declarations of the testator made before the execution of the codicil, as to the person whom he had appointed executor (*y*).

Name of executor written on an erasure.

"There is a wide distinction between the office of coadjutor or overseer and that of executor. The coadjutor or overseer has no power to intermeddle otherwise than to counsel, persuade, and advise; and if that fail to remedy negligence or miscarrying in the executors, he may complain to the Court, and his charges in so doing ought to be allowed out of the testator's estate. It is therefore material to inquire what words in a will amount only to an appointment as coadjutor or overseer. If A. be made an executor, and B. a coadjutor, without more, he is not by this made a joint executor with A. But if A. be made an executor, and the testator after in his will expresseth a wish that B. shall administer also with him, and in aid of him, here B. is an executor as well as A., and may prove the will alone as executor if A. refuse. Where an infant was

What words appoint a coadjutor. Distinction between his office and that of executor.

(*t*) *Leese, In goods of, supra*, note (*r*).

(*u*) *Baily, In goods of* (1871), L. R. 1 P. & D. 628; 20 L. T. 278.

(*x*) *De Rosaz, In goods of* (1877), 2 P. D. 66; 46 L. J. P. 6; 36 L. T. 263. See also *Grant* v. *Grant* (1870), L. R. 5 C. P. 380; 39 L. J. C. P. 272; 22 L. T. 829; *Charter* v. *Charter* (1874), L. R. 7 H. L. 364; 43 L. J. P. 73; *Brake, In goods of* (1881), 6 P. D. 217; 50 L. J. P. 48; 45 L. T. 191; *Ashton, In goods of*, (1892) P. 83; 61 L. J. P. 85; 67 L. T. 325; *Chappell, In goods of*, (1894) P. 98; 63 L. J. P. 98; 70 L. T. 245.

(*y*) *Sykes, In goods of* (1873), L. R. 3 P. & D. 26; 42 L. J. P. 17; 28 L. T. 142.

Coadjutor, office of, distinguished from that of executor.

made executor, and A. and B. *overseers*, with this condition, that they should have the rule and disposition of his goods, and payment and receipt of debts unto the full age of the infant, by this they were held to be executors in the meantime.

Executor according to tenor proving with executor nominate.

"Although, when there is an express appointment of an executor, it is less probable that there should be an indirect appointment to the same office, yet there is no objection, either in principle or practice, to admit an executor according to the tenor to probate, jointly with an executor expressly nominated" (*z*).

Substituted executors.

"A testator may appoint several persons as executors in several degrees; as where he makes his wife executrix, but if she will not or cannot be executrix, then he makes his son executor; and if his son will not or cannot be executor, then he makes his brother, and so on. In which case the wife is said to be *instituted* executor in the first degree; B. is said to be *substituted* in the second degree; C. to be *substituted* in the third degree, and so on.

If instituted executor accepts office and dies intestate, the substitutes are all excluded.

"It must be observed that if an instituted executor once accepts the office, and afterwards dies intestate, the substitutes, in what degree soever, are all excluded; because the condition of law (if he will not or cannot be executor) was once accomplished by such acceptance of the instituted executor" (*a*).

Secus, if substituted executor appointed on the happening of a specified contingency.

But it is otherwise if the testator appoint a substituted executor on the happening of a specified contingency, as where the testator appointed his son sole executor, but in the event of his going abroad, or being and remaining abroad two calendar months, then B. The Court, upon the contingency happening, granted probate to B., leave being reserved to the son to come in and prove the will (*b*).

Contingent appointment.

Court will

In every such case, the Court will look to see whether

(*z*) Wms. on Exors. 10th ed. pp. 169, 170.

(*a*) *Ibid.* pp. 171, 172.

(*b*) *Lane, In goods of* (1864), 33 L. J. P. 185.

look to see if contingency has happened.

the contingency has taken place or not (*c*), and the right of the *substituted* executor will not be affected by the mere fact that the instituted executor has already proved the will (*d*); nor by the fact he has predeceased the testator (*e*).

Delegated appointment.

A testator may, by his will, give power to some third person to appoint executors for him (*f*), and the person to whom such power has been delegated may appoint himself (*g*).

Appointment of executor, how qualified.

The appointment of executor "may be qualified, by limitations as to the time or place wherein or subject-matter whereon the office is to be exercised, or the creation of the office may be conditional" (*h*).

1. Limitations in point of time.

Thus, a testator may appoint a man to be executor five years after his death, or on the death or marriage of his son, or for a particular time, as for five years after his death, or during the minority of his son, or the widowhood of his wife, or in a thousand similar cases which may suggest themselves. In all such cases the appointment is good (*i*).

2. Limitations in point of place.

"In like manner the appointment may be limited in point of place; as thus, the testator may make A. his executor for his goods in Cornwall, B. for those in Devon, and C. for those in Somerset . . . . or which seems more rational and expedient, he may so divide the duty when his property is in various countries" (*k*).

(*c*) *Langford, In goods of* (1868), L. R. 1 P. & D. 458; 37 L. J. P. 20; 17 L. T. 415; *Lighton, In goods of* (1828), 1 Hagg. 235; *Johnson, In goods of* (1858), 1 S. & T. 17; 27 L. J. P. 9; *Naylor* v. *Stainsby* (1755), 2 Cas. temp. Lee, 54.

(*d*) *Foster, In goods of* (1872), L. R. 2 P. & D. 304; 41 L. J. P. 18; 25 L. T. 763.

(*e*) *Betts, In goods of* (1861), 30 L. J. P. 167. See further, on the subject of executors substituted, *Bradford, In goods of* (1895), 72 L. T. 267.

(*f*) *Cringan, In goods of* (1828), 1 Hagg. 548; *Jackson* v. *Paulet* (1852), 2 Rob. 344.

(*g*) *Ryder, In goods of* (1862), 2 S. & T. 127; 31 L. J. P. 215; 3 L. T. 756.

(*h*) Wms. on Exors. 10th ed. p. 175.

(*i*) See *Ibid.* pp. 175, 176.

(*k*) Wms. on Exors. 10th ed. p. 176.

Appointment of executors, how qualified.

2. Limitations in point of place.

As where an executor appointed one set of executors for Portugal and one for England (*l*); or the same with respect to India (*m*), or Tasmania (*n*), and England; and so on through innumerable examples that might be cited (*o*).

3. Limitations as to the subject-matter.

"Again, the power of an executor may be limited as to the subject-matter upon which it is to be exercised. Thus the testator may make A. his executor for his plate and household stuff, B. for his sheep and cattle, C. for his leases and estates by extent, and D. for his debts due to him" (*p*).

4. The appointment may be conditional.

Or the appointment may be conditional, as where "the testator willed that if his wife suffered J. S. to enjoy Blackacre for three years she should be executrix, but if she disturbed J. S., then he made his son executor" (*q*).

In what cases the appointed executor may transmit his appointment.

An executor cannot assign his executorship, but he can transmit it by will. So if a man be sole executor to a testator, and he dies leaving a will, wherein he appoints an executor, such executor becomes executor to the original testator. But it is otherwise if the executor die intestate, for in that case the representation to the original testator is not transmitted. The reason of this is that the power of an executor is founded on the trust and confidence reposed in him by his testator, and this trust and confidence are considered to be sufficient to warrant him in deciding who is to succeed him in the representation to the estate of the original testator. If, however, he die intestate he appoints nobody, and the administrator who represents him is only an officer appointed by the Court, who has no privity with the original testator. In that case the Court makes what is called a grant of administration *de bonis non* to the estate of the original testator.

Chain of representation.

(*l*) *Velho* v. *Leite* (1864), 3 S. & T. 456; 33 L. J. P. 107.

(*m*) *Wallich, In goods of* (1864), 3 S. & T. 423; 33 L. J. P. 87; 9 L. T. 809.

(*n*) *Harris, In goods of* (1870), L. R. 2 P. & D. 83; 39 L. J. P. 48; 22 L. T. 630.

(*o*) *Pulman, In goods of* (1864), 3 S. & T. 269; 33 L. J. P. 20; 9 L. T. 347.

(*p*) Wms. on Exors. 10th ed. p. 177.

(*q*) *Ibid.* pp. 178, 179.

First executor must have taken out probate.

So long then as the chain of representation is unbroken by an intestacy, the ultimate executor of the first executor is the representative of the original testator. Provided always, that is, that the first executor has proved the will, for if he die without having done so he cannot transmit his executorship. In that case an administrator, with the will of the original testator annexed, must be appointed (*r*).

Where more than one executor.

"If there are several executors appointed, and one of them dies, leaving one or more of his co-executors living, no interest in the executorship is transmissible to his own executor, but the whole representation survives and will be transmitted ultimately to the executor of the surviving executor, unless he dies intestate. Thus, if A. makes B. and C. executors, then B. makes J. S. executor and dies, and afterwards C. dies intestate, the executor of B. shall not be executor of A., because the executorship wholly and solely vested in C. by the survivorship; and so administration *de bonis non* shall be committed.

"The law was formerly the same where there were several executors, and one alone proved the will, and the rest renounced before the ordinary: there, upon the death of him who proved, no interest was transmitted to his executor, if any of those who refused were surviving. But the law is altered in this respect by the Court of Probate Act, 1857, s. 79" (*s*).

Probate of a will was granted to one of two executors, power being reserved to make the like grant to the other executor. The acting executor died, not having fully administered; at the date of his death the other executor had not been heard of for fourteen years. The daughter and sole next of kin of the testator, with the assent of the executors of the acting executor, moved for a grant to herself of letters of *administration de bonis non*. The Court held

(*r*) See, on this subject, Wms. on Exors. pp. 180—182.

(*s*) Wms. on Exors. 10th ed. p. 182.

Chain of representation.

that the grant could not be made, as, upon the non-appearance to a citation of the executor to whom power to prove had been reserved, the chain of executorship would be continued in the executors of the executor without any fresh grant from the Court, and leave was given to cite the absent executor by advertisement (*t*).

Executor *de son tort.*

"The definition of an *executor de son tort* by Swinburne, Godolphin and Wentworth, is in the same words, viz., 'He who takes upon himself the office of executor by intrusion, not being so constituted by the deceased, nor, for the want of such constitution, substituted by the Court to administer' (Swinb. Pt. 4, s. 23, pl. 1; Godolph. Pt. 2, c. 8, s. 1; Wentw. Off. Ex. c. 14, p. 320, 14th ed.). But the term is, in the older books, sometimes applied to a lawful executor who maladministers; as by the Lord Dyer, in *Stokes* v. *Porter* (1520), Dyer, 167a" (*u*).

Executors cannot be compelled to accept the office.

"The office of executor being a private one of trust, named by the testator, and not by the law, the person nominated may refuse, though he cannot assign the office; and even if in the lifetime of the testator he has agreed to accept the office, it is still in his power to recede.

May be cited to take or refuse probate.

"But though the executor cannot be compelled to accept the executorship, whether he will or not, yet by stat. 21 Hen. 8, c. 5, s. 8, the Ordinary might convene before him any person made and named executor of any testament, 'to the intent to prove or refuse the testament'; and if he neglected to appear, he was, previous to the stat. 53 Geo. 3, c. 127, punishable by excommunication for a contempt; and might subsequently be dealt with in the mode substituted by that statute, s. 2, for excommunication" (*x*).

(*t*) *Reid, In goods of,* (1896) P. 129; 65 L. J. P. 60; 74 L. T. 462.

(*u*) Wms. on Exors. 10th ed. p. 183, note (*a*). See also, on this subject generally, *Ibid.* pp. 183—196.

(*x*) Wms. on Exors. 10th ed. p. 197. And see, on the general subject of the executor's refusal or acceptance of the office, *Ibid.* Chap. VI. pp. 197—207.

Executor may be cited to take or refuse probate. C. P. Act, 1857, ss. 23, 25.

The 23rd section of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), confers upon the Court of Probate the powers of the Prerogative Court of the Archbishop of Canterbury, and the practice is, wherever necessary, to cite the executor to take or refuse probate. If the executor neglect to appear to such citation, he may be punished for contempt of Court under the 25th section.

C. P. Act, 1857, s. 79.

And by section 79 of the same statute, "where any person after the commencement of this Act renounces probate of the will of which he is appointed executor or one of the executors;" and by sect. 16 of the Amending Act (21 & 22 Vict. c. 95), "whenever an executor appointed in a will survives the testator but dies without having taken probate, and whenever an executor named in a will is cited to take probate and does not appear to such citation;" *then* "the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor." And the same is the case where an executor, to whom power has been reserved, survives his co-executor and does not appear to a citation (*y*).

C. P. Act, 1858, s. 16. Effect of renunciation or disobedience to citation to take or refuse probate.

Practice.

As to the manner in which an executor may renounce, see *post*, Part II., "Practice."

Executor intermeddling.

But although an executor is not compelled to accept the executorship, if he *intermeddle in* (that is to say, *interfere with*) the administration of the estate, he will be compellable to take probate.

"With respect to what acts will amount to an administering, such as to render an executor compellable to take probate, two general rules may be laid down: 1st, that whatever the executor does with relation to the goods and effects of the testator which shows an intention in him to take upon him the executorship, will regularly amount to

(*y*) *Noddings, In goods of* (1861), 2 S. & T. 15; 3 L. T. 178.

Executor intermeddling, what amounts to.

an administration. 2ndly, that whatever acts will make a man liable as an *executor de son tort*, will be deemed an election of the executorship" (*z*).

Advertising for debts due to or from deceased.

An advertisement inserted in divers newspapers calling upon persons to send in their accounts, and to pay money due to the testator's estate, to A. and B., "his executors in trust," was held to make A. and B. compellable to take probate (*a*).

Executor may renounce after he is sworn.

But "taking the oath as executor is not to be considered as an intermeddling, so as to preclude renunciation" (*b*).

Retracting renunciation.

It has never been decided that an executor who has filed a renunciation of his rights may not retract such renunciation, notwithstanding the terms of the Probate Act, 1857 (20 & 21 Vict. c. 77), s. 79 (*c*); but he certainly will not be allowed to do so, unless he can show that such retractation will be for the benefit of the estate or of those interested under the will (*d*).

Executor intermeddling may be cited to take probate.

When attached for disobedience.

Where an executor of a will who had intermeddled with the estate, but did not take probate of the will, had been cited to do so and had not obeyed the citation, the Court refused to order an attachment in the first instance, but directed a peremptory order to be served upon them to take probate within ten days of the order (*e*).

Need not be under seal.

The renunciation of an executor need not be under seal (*f*).

(*z*) Wms. on Exors. 10th ed. p. 200.

(*a*) *Long* v. *Symes* (1830), 3 Hagg. 774. See also, on the subject of executor intermeddling, *Lister, In goods of* (1894), 70 L. T. 812; *Coates, In goods of* (1898), 78 L. T. 820.

(*b*) Wms. on Exors. 10th ed. p. 202.

(*c*) *Badenach, In goods of* (1864), 3 S. & T. 465; 33 L. J. P. 179; 11 L. T. 275; *Stiles, In goods of*, (1898) P. 12; 67 L. J. P. 23; 78 L. T. 82.

(*d*) *Gill, In goods of* (1873), L. R. 3 P. & D. 113; *Loftus, In goods of* (1864), 3 S. & T. 307; 33 L. J. P. 59; 10 L. T. 24; *Jackson* v. *Whitehead* (1821), 3 Phill. 577.

(*e*) *Mordaunt* v. *Clarke* (1869), L. R. 1 P. & D. 592; 38 L. J. P. 45; 19 L. T. 610.

(*f*) *Boyle, In goods of* (1864), 3 S. & T. 426; 33 L. J. P. 109; 10 L. T. 541.

An executor cannot renounce after he has once taken probate (*g*).

Agreement to renounce.

Cannot renounce after taking probate.

A renunciation of an executor is not complete until it has been filed in Court, and before that is done it may be retracted at any time (*h*); and even afterwards the Court has jurisdiction, in a proper case, to allow a retractation (*i*).

The following is the most recent decision on the subject of this chapter.

Where one of several executors, who have taken probate, becomes incapable, the former grant will be revoked on motion, and a fresh grant issued to the remaining executors, with power reserved to the executor who has become incapable to come in and prove if and when again capable (*k*).

(*g*) *Veiga, In goods of* (1863), 3 S. & T. 13; 32 L. J. P. 9; 7 L. T. 644.

(*h*) *Morant, In goods of* (1874), L. R. 3 P. & D. 15; 43 L. J. P. 16; 30 L. T. 74. See also, on the subject of renunciation, *post*, Pt. II. Practice.

(*i*) *Badenach, In goods of, supra*, note (*e*).

(*k*) *Shaw, In goods of*, (1905) P. 92; 74 L. J. P. 39; 92 L. T. 427. See also Pt. II., Practice.

CHAPTER XI.

OF WHAT INSTRUMENTS PROBATE IS NECESSARY AND WHAT INSTRUMENTS OUGHT TO BE PROVED (*a*).

Will disposing of real estate only.

PRIOR to the Land Transfer Act, 1897, which came into operation Jan. 1st, 1898, a will *clearly* respecting land only and not personal property, and not appointing an executor, could not have been proved in the Court of Probate or Probate Division (*b*) ; but now such a will, in the case of a testator dying after the commencement of the said Act, may be proved in the Probate Division (*c*).

Of mixed real and personal estate.

But a will concerning both lands and goods had to be proved entirely in the Court of Probate (*d*) ; and the nomination of executors in a testamentary paper, purporting to dispose of real property only, entitled the document to probate (*d*). And, notwithstanding the renunciation of the executor, administration was granted with the will annexed (*e*).

Court of Probate Act, 1857 (20 & 21 Vict. c. 77), sect. 61.

And by sect. 61 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77)—

"Where proceedings are taken under this Act for

(*a*) See Wms. on Exors. 10th ed. pp. 300—305.

(*b*) *Habergham* v. *Vincent* (1790), 2 Ves. 230 ; *Drummond, In goods of* (1861), 2 S. & T. 8 ; 2 L. T. 391 ; *Bootle, In goods of* (1874), L. R. 3 P. & D. 177 ; 43 L. J. P. 41 ; 31 L. T. 273.

(*c*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1 (3).

(*d*) *O'Dwyer* v. *Geare* (1860), 1 S. & T. 465 ; 29 L. J. P. 47 ; *Barden, In goods of* (1866), L. R. 1 P. & D. 325 ; *Leese, In goods of* (1862), 2 S. & T. 442 ; 31 L. J. P. 169 ; 5 L. T. 848 ; *Brownrigg* v. *Pike* (1882), 7 P. D. 61 ; 51 L. J. P. 29 ; 46 L. T. 821 ; *Cubbon, In goods of* (1886), 11 P. D. 169 ; 55 L. J. P. 77 ; 57 L. T. 87 ; *Hornbuckle, In goods of* (1890), 15 P. D. 149 ; 59 L. J. P. 78 ; 63 L. T. 464.

(*e*) *Jordan, In goods of* (1868), L. R. 1 P. & D. 555 ; 37 L. J. P. 22.

proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this Act the validity of a will is disputed, unless in the several cases aforesaid, the will affects only personal estate, the heir-at-law, devisees, and other persons having or pretending interest in the real estate affected by the will shall, subject to the provisions of this Act, and to the rules and orders under this Act, be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders, and to the discretion of the Court."

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

"If an instrument be testamentary, whatever may be its form, probate of it must be obtained in the Probate Division, otherwise its existence cannot be recognized in any Court of Law or Equity.

"A paper which neither disposes of property nor appoints an executor, generally speaking, has no testamentary character so as to enable the Court to grant probate of it (*f*).

"But a codicil, not containing any disposition of property, but simply revoking all former wills, is of a testamentary nature and ought to be admitted to probate (*g*); so if the executor after probate discovers any testamentary paper, he ought to bring it into the Court of Probate and though it be a mere confirmation of the will already proved" (*h*).

"The bare nomination of an executor, without giving

Appointment

(*f*) Wms. on Exors. 10th ed. pp. 301, 302.

(*g*) *Brenchley* v. *Still* (1852), 2 Robert. 162.

(*h*) *Weddall* v. *Nixon* (1853), 17 Beav. 160; 22 L. J. Ch. 939. See also, on the subject of probate of mixed wills of realty and personalty before the Land Transfer Act, 1897, came into operation, *Gunn, In goods of* (1884), 9 P. D. 244; 53 L. J. P. 107; *Tomlinson, In goods of* (1881), 6 P. D. 209; 50 L. J. P. 74; 46 L. T. 484. See also, on the subject of "Heirlooms," Wms. on Exors. 10th ed. pp. 545—551.

of executor gives right to probate.

any legacy, or appointing anything to be done by him, is sufficient to make it a will, and as a will it is to be proved" (*i*).

Codicil must be proved with will.

A codicil, conditioned to take effect only on an event which does not happen, republishes a will, and is on that ground entitled to probate (*k*); and every codicil to a will must be proved with and in the same manner as the will, unless any such codicil or codicils are in litigation (*l*).

It is not necessary that a will simply appointing guardians should be proved (*m*).

Codicil proved without will.

Where a testator made his will and gave it to his son to keep, and on his death the will was not forthcoming, the codicil was admitted to probate (*n*).

For a codicil is not revoked merely by the revocation of a will, unless the codicil was also revoked at the same time, by one of the methods recognized by the Wills Act (*o*).

Probate of codicil to revoked will.

But when a will and codicil have been in existence, and the will has been revoked, the Court will not grant probate of the codicil, unless it is satisfied that the testator intended it to operate separately from the will (*p*).

Where a codicil, purporting to be a codicil to a revoked will, referred to a bequest not contained in the will but in a deed of gift, the Court admitted it to probate (*q*).

If a codicil purporting to revive a will refers to the wrong will by mistake, the Court will accept parol evidence on the point, and if satisfied that there has been a

(*i*) Wms. on Exors. 10th ed. p. 157.

(*k*) *Da Silva, In goods of* (1861), 2 S. & T. 315; 30 L. J. P. 171; 5 L. T. 140.

(*l*) *Robarts, In goods of* (1873), L. R. 3 P. & D. 110; 42 L. J. P. 63; 28 L. T. 913.

(*m*) *Morton, In goods of* (1864), 3 S. & T. 422; 33 L. J. P. 87; 9 L. T. 809.

(*n*) *Savage, In goods of* (1870), L. R. 2 P. & D. 78; 39 L. J. P. 25; 22 L. T. 375.

(*o*) See *Coppin* v. *Dillon* (1831), 4 Hagg. 361; *Grimwood* v. *Cozens* (1859), 2 S. & T. 364; *Dutton, In goods of* (1863), 3 S. & T. 66; 32 L. J. P. 137; 8 L. T. 609; *Ellis, In goods of* (1864), 33 L. J. P. 27.

(*p*) *Greig, In goods of* (1866), L. R. 1 P. & D. 72; 35 L. J. P. 113; 13 L. T. 681.

(*q*) *Black* v. *Jobling* (1869), L. R. 1 P. & D. 685; 38 L. J. P. 74; 21 L. T. 298.

bonâ fide mistake will admit the codicil to probate together with the will the testator intended to revive (*r*). Codicil, probate of.

Where a testator duly executed a paper which commenced, "I hereby make a free gift to," &c., the Court being satisfied that he intended the operation of such paper to be dependent on his death, granted probate of it as a codicil to his will (*s*).

Where in the attestation clause of a third codicil it was stated by mistake that the first codicil had been cancelled, the Court held that an attestation clause formed no part of the operative portion of a codicil, and that all the three codicils must be admitted to probate (*t*). Attestation clause no part of operative portion of codicil.

Where a will has been proved abroad, probate of any codicil thereto should be granted by the Court which granted probate of the will (*u*). Will proved abroad.

"The will of a man is the aggregate of his testamentary intentions, so far as they are manifested in writing duly executed according to the statute; and as a will, if contained in one document, may be of several sheets, so it may consist of several independent papers each so executed. Redundancy or repetition in such independent papers will no more vitiate any of them, than similar defects if appearing on the face of a single document" (*x*). Will contained in several papers.

In such a case, the documents, whether they be two or

(*r*) See *Thomson, In goods of* (1866), L. R. 1 P. & D. 8; 35 L. J. P. 17; 13 L. T. 608. See also *Jansen* v. *Jansen*, cited by Sir J. Nicholl in *Rogers* v. *Pittis* (1822), 1 Ad. 38; *Houblon, In goods of* (1865), 11 Jur. N. S. 594; *Lord St. Helens* v. *Lady Exeter* (1810), 3 Phill. 461; *Thompson* v. *Hempenstall* (1847), 1 Rob. 783; *Wilson, In goods of* (1867), L. R. 1 P. & D. 575; *May, In goods of* (1867), *Ibid.*; *Whatman, In goods of* (1865), 34 L. J. P. 17; *Ince, In goods of* (1877), 2 P. D. 111; 46 L. J. P. 30; 36 L. T. 519.

(*s*) *Robertson* v. *Smith* (1870), L. R. 2 P. & D. 43; 39 L. J. P. 21; 22 L. T. 417.

(*t*) *Atkinson, In goods of* (1883), 8 P. D. 165; 52 L. J. P. 80.

(*u*) *Miller, In goods of* (1883), 8 P. D. 167; 52 L. J. P. 93.

(*x*) See *Lemage* v. *Goodban* (1866), L. R. 1 P. & D. 57; 35 L. J. P. 28; 13 L. T. 508.

Will contained in several papers. English and foreign wills.

more, are said to be admitted to probate "as together containing the last will of the deceased" (*y*).

If a testator has made two independent wills, one disposing of his property in this country and the other disposing of his property abroad, the former alone should be admitted to probate here (*z*).

In *Murray, In goods of* (*a*), the principal decisions on this subject were reviewed and considered by Gorell Barnes, J., who also expressed the opinion that the then recent Finance Act of 1894 did not affect the question of what documents ought to be admitted to probate (*b*).

Inconsistent testamentary papers.

Where a testator left two wills, and the second did not contain any appointment of executors, the Court granted probate of both wills to the executors named in the first (*c*).

If a subsequent testamentary paper, whether in form of a will or a codicil, be only partially inconsistent with one of an earlier date and contains no revocatory clause, then both documents must be admitted to probate (*d*).

Erroneous reference

Where a codicil makes reference to the provisions of an earlier will, such earlier is confirmed and will revive; and

(*y*) See *Nickalls, In goods of* (1865), 4 S. & T. 40; 34 L. J. P. 103; *Morgan, In goods of* (1866), L. R. 1 P. & D. 214; 35 L. J. P. 98; 14 L. T. 894; *Birks* v. *Birks* (1865), 4 S. & T. 23; 34 L. J. P. 90; 13 L. T. 193; *Harris, In goods of* (1870), L. R. 2 P. & D. 83; 39 L. J. P. 48; 22 L. T. 630; *Donaldson, In goods of* (1873), L. R. 3 P. & D. 45; 42 L. J. P. 19; 28 L. T. 477.

(*z*) *Coode, In goods of* (1867), L. R. 1 P. & D. 449; 36 L. J. P. 129; 16 L. T. 746; *Astor, In goods of* (1876), 1 P. D. 150; 45 L. J. P. 78; 34 L. T. 856; *Lockhart, In goods of* (1892), 69 L. T. 21; *Briesmann, In goods of* (1895), 72 L. T. 268; *Schenley, In goods of* (1904), 20 Times L. R. 127.

(*a*) (1896) P. 65; 65 L. J. P. 49.

(*b*) (1896) P. at p. 72.

(*c*) *Griffith, In goods of* (1872), L. R. 2 P. & D. 457; 26 L. T. 786.

(*d*) *Petchell, In goods of* (1874), L. R. 3 P. & D. 153; 43 L. J. P. 22; 30 L. T. 74; *Lemage* v. *Goodban, supra*, note (*x*); *Cadell* v. *Willcocks*, (1898) P. 21; 67 L. J. P. 8; 78 L. T. 83. See also *Robinson* v. *Clarke* (1877), 2 P. D. 69; 47 L. J. P. 17; 39 L. T. 43; *Braddock, In goods of* (1876), 1 P. D. 433; 45 L. J. P. 96; *Graham, In goods of* (1863), 3 S. & T. 69; 32 L. J. P. 113; 8 L. T. 610.

the mistake cannot be corrected otherwise than by admitting the earlier will to probate together with the codicil and the later will (*e*). by codicil to prior will.

In giving judgment in the above case Lord Hannen said (*f*): "It is always extremely difficult to apply any principles of law to a gross blunder, but having given the case the best consideration I can, I have come to this conclusion, that the codicil thus referring to the will of 1877, so far confirms, and brings that will into existence, that it must form part of the probate in order that the codicil may have an interpretation put upon it, and that as the will of 1878 does contain also the most important of the testamentary dispositions which the testator has made, and which have never been revoked, the will of 1878 must also be admitted to probate. *In the goods of Stedham.* Judgment of Lord Hannen.

"The three documents, therefore, the will of 1877, and the will of 1878, and the codicil, must all in their order of date be admitted to probate, and the general intent to be collected from the three instruments will then become the subject of consideration, if necessary, for a court of construction."

The following are some of the most important of the more recent decisions on the subject of this chapter in order of date. Recent decisions.

A testatrix left two testamentary documents, the second of which only was duly executed. The Court held that probate could not be granted of both documents, as together containing the will of the deceased, but that probate might be granted of the second or executed document with directions to the executor to administer the estate in conformity with the trusts of the first document (*g*). 1893.

A testator left altogether five testamentary documents, a will and two codicils dealing with property both in 1894.

(*e*) *Stedham, In goods of* (1881), 6 P. D. 205; 50 L. J. P. 75; 45 L. T. 192.

(*f*) 6 P. D. at p. 206.

(*g*) *Marchant, In goods of,* (1893) P. 254; 62 L. J. P. 114.

Recent decisions.

England and Russia, and a will and codicil dealing with property in Russia only. Although all persons interested in the property in both countries concurred in the application, the Court refused to allow the documents referring only to property in Russia to be included in the probate of the English will and codicils (*h*).

1895. A testator executed a first codicil to his will. On the death of his wife, he altered a draft of the first codicil so as to make a second codicil. The second codicil referred to the will but not to the first codicil, and, except that it made alterations consequent on the wife's death, and that one legacy was increased, it was a repetition of the first codicil. There was no external evidence of the testator's intentions as to the two codicils:—The Court held that the second codicil was intended to be substituted for the first, and granted probate of the will and second codicil only (*i*).

1902. The Court upon motion of the sole executrix granted probate of a will which had been torn up and afterwards pasted together again, notwithstanding the fact that the persons interested in intestacy were not *sui juris* and no *guardian ad litem* had been appointed by the Court to represent them (*k*).

1905. Where there are two testamentary documents of the same date, and it cannot be ascertained which of the two was executed first, and they are so inconsistent that they cannot stand together, neither ought to be admitted to probate. But in such a case, if there is no revocatory clause, although the provisions are apparently inconsistent, the Court will endeavour so to construe the words that both documents may be admitted to probate. A testatrix executed two codicils on the same day, with provisions to some

(*h*) *Tamplin, In goods of*, (1894) P. 39; 63 L. J. P. 75. See *Garnett, In goods of*, (1894) P. 90; 63 L. J. P. 82; 70 L. T. 37; *Durham* v. *Northen*, (1895) P. 66; 69 L. T. 691.

(*i*) *Chichester* v. *Quatrefagas*, (1895) P. 186; 64 L. J. P. 79; 72 L. T. 475.

(*k*) *Brassington, In goods of*, (1902) P. 1; 71 L. J. P. 9; 85 L. T. 644.

extent inconsistent. The evidence of the attesting witnesses proved that both codicils were executed practically simultaneously. There was nothing to show which was executed first: Held by the Court below that neither codicil could be admitted to probate, as the introductory clause in each showed that it was intended to operate in the event of the testatrix surviving her husband, whereas she predeceased him: Held, by the Court of Appeal, that the codicils were not contingent or conditional, but intended to operate in any event, and that their provisions were not so inconsistent that they could not stand together, and that both ought to be admitted to probate (*l*). Recent decisions. 1905.

(*l*) *Townsend* v. *Moore*, (1905) P. 66; 74 L. J. P. 17; 92 L. T. 335 (statement of the law in Wms. on Exors. 7th ed. p. 162; 8th ed. p. 138, approved. See Wms. on Exors. 10th ed. p. 125).

CHAPTER XII.

OF WHAT PROBATE GRANTED—INCORPORATION OF DOCUMENTS—OMISSION OF WORDS FROM PROBATE—LOST WILLS.

Probate sometimes granted of more or less than actual testamentary paper.

A WILL is not necessarily contained in the testamentary paper which is attested and signed, but may constitute as a part of itself other papers by mere reference.

Therefore it often happens that documents referred to in a testamentary paper become incorporated with, and form part of, such testamentary paper, and as such obtain the probate of the Court.

On the other hand, as the Court grants probate only of the *will* of the deceased, it by no means follows that probate is granted of the whole paper, and that portions of the document, added by mistake, fraud, or the like, are left out, as forming no part of the testamentary intentions of the deceased.

Reference in testamentary paper to unexecuted paper.

The result of the authorities, both before and since the Wills Act, "appears to be, that where there is a reference, in a duly-executed testamentary instrument to another testamentary instrument by such terms as to make it capable of identification, it is necessarily a subject for parol evidence, and that when the parol evidence sufficiently proves that, in the existing circumstances, there is no doubt as to the instrument, it is no objection to it that, by possibility, circumstances might have existed in which the instrument referred to could not have been identified" (*a*).

(*a*) Per Lord Kingsdown in *Allen* v. *Maddock*, *infra*. And see, on the subject of incorporation of documents generally, Wms. on Exors. 10th ed. pp. 74—78.

But the reference in a will must be in such terms as to exclude parol testimony, as where it is to papers not yet written, or where the description is so vague as to be incapable of being applied to any instrument in particular; but the authorities seem clearly to establish that where there is a reference to any written document described as "then existing" in such terms that it is capable of being ascertained, parol evidence is admissible to ascertain it (*b*).

Identity must be clear.

But it must be referred to by the will in such a manner as shall, with the assistance of parol evidence, leave no doubt as to its identity (*c*): and the paper referred to must be already written (*d*).

(*b*) *Allen* v. *Maddock* (1857), 11 Moo. P. C. 427; Dea. & Sw. 325; *Dallow, In goods of* (1866), L. R. 1 P. & D. 189; 35 L. J. P. 81; 14 L. T. 573; *Sunderland, In goods of* (1866), L. R. 1 P. & D. 198; 35 L. J. P. 82; 14 L. T. 741.

(*c*) *Singleton* v. *Tomlinson* (1878), 3 A. C. 404; 38 L. T. 653; *Kehoe, In goods of* (1883), 13 L. R. Ir. 13, Prob. The following are some of the principal cases on the sufficiency of the proof of identity: *Smart* v. *Prujean* (1801), 6 Ves. 565; *Dillon* v. *Harris* (1830), 4 Bligh, N. S. 321; *Smith, In goods of* (1840), 2 Curt. 796; *Greaves, In goods of* (1859), 1 S. & T. 250; *Drummond, In goods of* (1861), 2 S. & T. 8; 2 L. T. 391; *Allnutt, In goods of* (1864), 3 S. & T. 167; 33 L. J. P. 86; *Brewis, In goods of* (1864), 3 S. & T. 473; 33 L. J. P. 124; *Dickinson* v. *Stidolph* (1861), 11 C. B. N. S. 341; *Luke, In goods of* (1865), 34 L. J. P. 105; *Van Straubenzee* v. *Monck* (1863), 3 S. & T. 6; 32 L. J. P. 21; 7 L. T. 723; *Sunderland, In goods of* (1866), L. R. 1 P. & D. 198; 35 L. J. P. 82; 14 L. T. 741; *Truro* (*Lady*), *In goods of* (1866), L. R. 1 P. & D. 201; 35 L. J. P. 89; 14 L. T. 893; *Watkins, In goods of* (1866), L. R. 1 P. & D. 19; 35 L. J. P. 14; 13 L. T. 445; *Dallow, In goods of* (1866), L. R. 1 P. & D. 189; 35 L. J. P. 81; 14 L. T. 741; *Gill, In goods of* (1870), L. R. 2 P. & D. 6; 39 L. J. P. 5; 21 L. T. 399; *Mercer, In goods of* (1870), L. R. 2 P. & D. 91; 39 L. J. P. 43; 23 L. T. 195; *Heathcote, In goods of* (1881), 6 P. D. 30; 50 L. J. P. 42; 44 L. T. 280; *Daniell, In goods of* (1883), 8 P. D. 14; 52 L. J. P. 23; 48 L. T. 124; *Garnett, In goods of*, (1894) P. 90; 63 L. J. P. 82; 70 L. T. 37; *Eyre* v. *Eyre*, (1903) P. 131; 72 L. J. P. 45; 88 L. T. 576.

(*d*) The following are some of the cases as to the necessity of the incorporated paper being already in existence:—*Wilkinson* v. *Adam* (1812), 1 Ves. & B. 445; *Utterton* v. *Robins* (1834), 1 A. & E. 423; *Gill, In goods of* (1870),

Declarations of testator, &c. as evidence.

Verbal or written declarations made by a testator or testatrix, either contemporaneously with or prior to the execution of his or her will, are admissible as tending to make clear his intentions and to show of what he intended his will to consist (*e*).

Cases in which documents have been held to be incorporated by a duly executed testamentary paper.

In the following cases the Court held that documents referred to in a duly executed testamentary instrument were incorporated thereby (*f*).

Cases in which Court held documents referred to in a duly executed testamentary instrument to be *not incorporated thereby.*

In the following cases the Court held that the documents referred to were not incorporated (*g*).

L. R. 2 P. & D. 6; 39 L. J. P. 5; 21 L. T. 399; *Singleton* v. *Tomlinson* (1878), 3 A. C. 404; 38 L. T. 653; *Smart, In goods of*, (1902) P. 238; 71 L. J. P. 123; 87 L. T. 142; *Smart* v. *Prujean* (1801), 6 Ves. 565; 5 R. R. 395; *Van Straubenzee* v. *Monck* (1863), 3 S. & T. 6; 32 L. J. P. 21; 7 L. T. 723; *Sunderland, In goods of* (1866), L. R. 1 P. & D. 198; 35 L. J. P. 82; 14 L. T. 741; *Durham* v. *Northen*, (1895) P. 66; 69 L. T. 691; *Truro, In goods of* (1866), L. R. 1 P. & D. 201; 35 L. J. P. 89; *Stewart, In goods of* (1863), 3 S. & T. 192; 32 L. J. P. 94; *Matthias, In goods of* (1863), 3 S. & T. 100; 32 L. J. P. 115; 8 L. T. 471; *Reid, In goods of* (1869), 38 L. J. P. 1.

(*e*) *Johnson* v. *Lyford* (1867), L. R. 1 P. & D. 546; *Sykes, In goods of* (1873), L. R. 3 P. & D. 26; 42 L. J. P. 17; 28 L. T. 142; *Sugden* v. *Lord St. Leonards* (1876), 1 P. D. 154; 45 L. J. P. 49; 34 L. T. 372; *Dench* v. *Dench* (1877), 2 P. D. 60; 46 L. J. P. 13; *Gould* v. *Lakes* (1881), 6 P. D. 1; 49 L. J. P. 59; 43 L. T. 382.

(*f*) *Allen* v. *Maddock* (1857), 11 Moo. P. C. 427; Dea. & Sw. 325; *Almosnino, In goods of* (1860), 1 S. & T. 508; 27 L. J. P. 46; 2 L. T. 19; *Sheldon* v. *Sheldon* (1845), 1 Robert. 81; *Utterton* v. *Robins* (1834), 1 A. & E. 423; *Truro, In goods of* (1866), L. R. 1 P. & D. 201; 35 L. J. P. 89; 14 L. T. 893; *Howden, In goods of* (1874), 43 L. J. P. 26; 30 L. T. 768; *Mercer, In goods of* (1870), L. R. 2 P. & D. 91; 39 L. J. P. 43; 23 L. T. 195; *Daniell, In goods of* (1883), 8 P. D. 14; 52 L. J. P. 23; 48 L. T. 124; *Heathcote, In goods of* (1881), 6 P. D. 30; 50 L. J. P. 42; 44 L. T. 280; *Rees* v. *Rees* (1874), L. R. 3 P. & D. 84; 29 L. T. 375.

(*g*) *Lancaster, In goods of* (1860), 29 L. J. P. 155; *Watkins, In goods of* (1866), L. R. 1 P. & D. 19; 35 L. J. P. 14; 13 L. T. 445; *Luke, In goods of* (1865), 34 L. J. P. 105; *Matthias, In goods of* (1863), 3 S. & T. 100; 32 L. J. P. 115; 8 L. T. 471; *Woods, In goods of* (1868), L. R. 1 P. & D. 556; 37 L. J. P. 23; 17 L. T. 583; *Dallow, In goods of* (1866), L. R. 1 P. & D. 189; 35 L. J. P. 81; 14 L. T.

The points deducible from the cases seem to be: 1st, the testamentary instrument must clearly describe the document proposed to be incorporated, but the document may be *identified* by parol; 2nd, the testamentary instrument must describe it as *already existing*—if defective in this, the fact cannot be supplied by parol; 3rdly, when duly incorporated, the paper, however informal, becomes equally valid with the instrument with which it is incorporated, but it must be an *operative instrument*.

Result of decisions.

Result of decisions as to incorporation of documents.

The following are the more recent cases on the subject of "incorporation," in order of date.

1892. Words of reference. Latent ambiguity. Parol evidence.

A testatrix by a will executed in 1873, bequeathed the residue of a certain fund over which she had a power of appointment, having previously appointed the same fund by deed. In 1881 she made another will which revoked all other wills, but contained the following recital: "Whereas I have also settled one undivided moiety of the residue of the said third part of 100,000*l.*, to which I am entitled under the will of my said brother, in favour of my daughter E. J. P." The Court held (1) that this recital did not refer to the will of 1873 so as to raise the question whether it incorporated it by reference; and (2) that there was no such ambiguity as to make declarations of intention by the testatrix admissible in evidence (*h*).

1894. Papers not sufficiently identified.

A testator executed a document in the presence of two witnesses who duly attested it. The document appointed no executor and contained no bequests; but referred to "the enclosed papers 1, 2, 3, 4, 5 and 6," as containing his testamentary wishes, and recited that those papers had

573; *Greenwood, In goods of*, (1892) P. 7; 61 L. J. P. 56; 66 L. T. 61; *Sunderland, In goods of* (1866), L. R. 1 P. & D. 198; 35 L. J. P. 82; 14 L. T. 741; *Stockil* v. *Punshon* (1881), 6 P. D. 9; 50 L. J. P. 14; 44 L. T. 280; *Gill, In goods of* (1870), L. R. 2 P. & D. 6; 39 L. J. P. 5; 21 L. T. 399; *Pearse, In goods of* (1867), L. R. 1 P. & D. 382; 36 L. J. P. 117; 16 L. T. 853; *Singleton* v. *Tomlinson* (1878), 3 A. C. 404; 38 L. T. 653.

(*h*) *Paton* v. *Ormerod*, (1892) P. 247; 61 L. J. P. 120; 66 L. T. 381.

1894. Papers not sufficiently identified.

been signed by himself in the presence of the witnesses, who, however, stated that they had never seen them. They deposed that the deceased had called them into his study, told them he had made certain alterations in his will, and asked them to witness his signature; at the same time pointing to a drawer and saying, "The will is in this drawer." Papers 1 to 6 bore dates antecedent to the attested document. All the papers were holograph, and the attestation clause of the attested document referred to the deceased as the "testator." The Court held that as the documents were not clearly identified as those referred to in the attested paper, so as to exclude the possibility of a mistake, and as the attested document without the others would be inoperative, probate of all the documents must be refused (*i*).

1895. Document not referred to as existing.

A testator devised property to trustees to provide an annuity for his wife, setting apart certain funds which they would find "*noted*" by him. He made two codicils confirming the will. After his death a document was found in his handwriting purporting to be instructions to his executors, and containing the words, "*the stocks to be set aside to pay my wife the* 3,000*l. per annum*," followed by a list of securities. The earliest date which could be attributed to this document was after the will, but before the codicils; the Court held that as the language of the will did not refer to the document as existing, the codicils had not the effect of incorporating it (*k*).

1902. Document spoken of in will as a future docu-

A testatrix directed her trustees to give to such of her friends as she might designate in a book or memorandum to be found with her will, "the different articles specified

(*i*) *Garnett, In goods of*, (1894) P. 90. See also *Wainewright* v. *Wainewright* (1894), 71 L. T. 265; *Woodroffe* v. *Creed* (1894), Ir. R. 508.

(*k*) *Durham* v. *Northen*, (1895) P. 66; 69 L. T. 691 (*Reid, In goods of* (1869), 38 L. J. P. 1, followed). The case of *Murray, In goods of*, (1896) P. 65; 65 L. J. P. 49, has been already cited. See also *White, In goods of*, (1896) 1 Ir. R. 269, Prob.; cited Wms. on Exors. 10th ed. p. 60, note (*x*).

for such friend in such book or memorandum . . . . . ." Subsequently she executed a codicil confirming her will: the Court held that as the "book or memorandum" was referred to in the will as a future document, the codicil could only be taken to speak of the "book, &c." as a future document, although it was in fact written before the date of the codicil, and that therefore such "book, &c.," could not be incorporated (*l*).

ment cannot be said to be "*existing*" at date of will, although actually written before date of codicil confirming will.

A testator duly executed a will in 1894, and a holograph codicil in 1898. In 1902 a codicil was drawn by a confidential clerk of the testator to what the clerk believed to be the last will of the deceased, the testator having vouched that he had executed a will, though without giving any date, and the clerk based his codicil on an incomplete draft handed to him by the deceased. This codicil was duly executed, the testator saying, "This is a codicil to my last will." It carried out his wishes, so far as it went; but some points were left over for further consideration. The testator died shortly afterwards; the Court held that the will of 1894, the codicil thereto of 1898, and the document executed as a codicil in 1902, were all to be admitted to probate (*m*).

1903. Codicil by mistake referring to wrong document as "*my last will*."

As the Court only grants probate of the *will* of the deceased, it does not necessarily follow that probate is granted of all the *writing* on the testamentary paper.

Probate of less than the whole document.

Where the solicitor who drew the will fraudulently inserted the residue to himself, the Court, on receiving parol evidence of the facts, ordered the clause as to the residue to be struck out (*n*).

Clause introduced by fraud.

The Court, however, has power, if words have been inserted in a will by fraud (*o*), or by mistake, without the

Words

(*l*) *Smart, In goods of*, (1902) P. 238; 71 L. J. P. 123; 85 L. T. 644.

(*m*) *Eyre* v. *Eyre*, (1903) P. 131; 72 L. J. P. 45; 88 L. T. 567.

(*n*) *Barton* v. *Robins* (1810), 3 Phill. 455, n.

(*o*) *Allen* v. *Macpherson* (1810), 3 Phill. 455; *Guardhouse* v. *Blackburne* (1866), L. R. 1 P. & D.

inserted by mistake.

knowledge of the testator (*p*), to correct the error by omission of words so inserted, and, to negative the knowledge of the testator, to refer to the instructions; but the Court has no power to supply words accidentally omitted from a will (*q*).

Offensive or libellous passages.

The Court will not exercise its power of omitting from the probate offensive or libellous passages in a will, except in cases of a very special and definite character. It, therefore, refused to omit from the probate a paragraph in a will which, though offensive, was not calculated to injure (*r*).

Although the Court will order a word inserted by mistake to be struck out, it will not under any circumstances order another word to be substituted for it (*s*).

Blanks, complete or partial, in will.

A complete blank in a will cannot be filled up, but a partial blank may be explained by evidence *dehors* of intention. So where a legatee in a will was described as "*my granddaughter*," and the testatrix had in fact three granddaughters, the Court admitted evidence to show which of the three granddaughters was meant (*t*).

109; 35 L. J. P. 116; 14 L. T. 69; *Collins* v. *Elstone*, (1893) P. 1; 62 L. J. P. 26; 27 L. T. 624.

(*p*) *Duane, In goods of* (1862), 2 S. & T. 590; 31 L. J. P. 173; 6 L. T. 788; *Oswald, In goods of* (1874), L. R. 3 P. & D. 162; 43 L. J. P. 24; 30 L. T. 344; *Gordon, In goods of*, (1892) P. 228; 61 L. J. P. 132; 67 L. T. 328; *Moore, In goods of*, (1892) P. 378; 62 L. J. P. 9.

(*q*) *Harter* v. *Harter* (1873), L. R. 3 P. & D. 11; 42 L. J. P. 1; 27 L. T. 858. See Wms. on Exors. 10th ed. pp. 258, 259, 291, 292, and the following cases:—*Sharman, In goods of* (1860), L. R. 1 P. & D. 661; 38 L. J. P. 47; 20 L. T. 683; *Forest, In goods of* (1862), 2 S. & T. 334; 31 L. J. P. 200; 5 L. T. 689; *Walkley, In goods of* (1892), 69 L. T. 419; *Beamish* v. *Beamish* (1894), 1 Ir. R. Prob. 7; *Snowden, In goods of* (1896), 75 L. T. 279; *Durlacher, In goods of* (1897), 75 L. T. 664; *Reade, In goods of*, (1902) P. 75; 71 L. J. P. 45; 86 L. T. 258; *Brisco* v. *Baillie Hamilton*, (1902) P. 234; 71 L. J. P. 121; 87 L. T. 746; *Vaughan* v. *Clerk* (1902), 87 L. T. 144.

(*r*) *Honywood, In goods of* (1871), L. R. 2 P. & D. 251; 40 L. J. P. 35; 35 L. T. 164. See also *ante*, Chap. III.

(*s*) *Schott, In goods of*, (1901) P. 190; 70 L. J. P. 46; 84 L. T. 571.

(*t*) *Hubbuck, In goods of*, (1905) P. 129; 74 L. J. P. 58; 92 L. T.

There can be no doubt that if a will duly executed and never revoked by the testator, is destroyed without his authority it may be established, upon satisfactory evidence being given of its having been so destroyed and of its contents (*u*). Will destroyed without testator's authority.

So the Court granted probate of the draft of a lost will, being satisfied that it was in existence at the time of the death of the testator, and that it had been either suppressed or destroyed by the next of kin (*x*). Lost wills.

But the Court will not grant probate of the contents of a lost will, unless there is very cogent evidence that such a will did exist, and that it was in existence at the time of the death of the testator (*y*).

As a general rule the Court will not grant probate of a lost will on motion except with the consent of all parties interested in intestacy, nor will it always do so where such consent has been obtained (*z*). Probate of, on motion. Practice as to.

Probate will be granted of a codicil to a will, when the will cannot be found, if the Court is satisfied by the dispositions of the codicil that the testator intended that it should operate independently of the will (*a*). Of codicil to lost will.

But the whole subject of lost wills received careful consideration in the case of *Sugden* v. *Lord St. Leonards*, decided in the year 1876, the result of which important decision, as far as it affects lost wills, may be shortly given as follows:— *Sugden* v. *St. Leonards.*

The contents of a lost will, like those of any other instrument, may be proved by secondary evidence.

665; 21 Times L. R. 333. See further, on this subject, *ante*, Chap. III.

(*u*) See Wms. on Exors. 10th ed. pp. 117, 118, 263 *et seq.*

(*x*) *Podmore* v. *Whatton* (1864), 3 S. & T. 449; 33 L. J. P. 143; 10 L. T. 754.

(*y*) *Wharram* v. *Wharram* (1864), 3 S. & T. 301; 33 L. J. P. 75; 10 L. T. 163.

(*z*) *Barber, In goods of* (1867), L. R. 1 P. & D. 267; 36 L. J. P. 19; 15 L. T. 192. See also *Pearson, In goods of*, and *Apted, In goods of, post*, p. 122.

(*a*) *Greig, In goods of* (1866), L. R. 1 P. & D. 72; 35 L. J. P. 113; 13 L. T. 681.

Lost wills. Declarations of testator, written or oral, evidence of contents.

Declarations, written or oral, made by a testator, both before and after the execution of his will, are in the event of its loss, admissible as secondary evidence of its contents.

The contents of a lost will may be proved by a single witness, even though interested, whose veracity and competency are unimpeached.

When the contents of a lost will are not completely proved, probate will be granted to the extent to which they are proved (*b*).

In a subsequent case, it was held (following *Sugden* v. *Lord St. Leonards*), that declarations of a deceased person who had been in possession of property, claiming a limited interest therein, under a particular will, were admissible to prove the fact that such will had a legal existence, and also that certain persons were named executors therein (*c*).

Woodward v. *Goulstone.*

In the case of *Woodward* v. *Goulstone* (*d*), decided in the House of Lords, in which *Sugden* v. *Lord St. Leonards* was commented on, their Lordships reserved their opinion on the point whether the judgment of the Court in that case was correct in holding that the post-testamentary declarations of a testator are admissible in evidence as to the contents of a lost will, and expressly stated that without overruling the judgment in *Sugden* v. *St. Leonards*, the question must be left open. "If a lost will is propounded for probate upon parol evidence alone, with evidence of a residuary bequest, but no sufficient evidence as to the rest of the will. *Quære*, whether probate ought to be granted of the residuary bequest alone, unless the Court is satisfied that it has before it substantially the testamentary inten-

(*b*) *Sugden* v. *Lord St. Leonards* (1876), 1 P. D. 154; 45 L. J. P. 49; 34 L. T. 37. See Wms. on Exors. 10th ed. pp. 114, 116, 117, 118, 264, 267, 268, 293, 294, 450 (*Quick* v. *Quick* (1864), 3 S. & T. 442; 33 L. J. P. 146; 10 L. T. 619, overruled).

(*c*) *Sly* v. *Sly* (1877), 2 P. D. 91; 46 L. J. P. 63.

(*d*) (1887), 11 App. Cas. 469; 56 L. J. P. 1; 55 L. T. 790. See also Wms. on Exors. 10th ed. p. 267.

tions of the testator. *Quære*, also, whether post-testamentary declarations of the testator as to the contents are admissible in evidence." Lost wills.

In a later case the plaintiff propounded a non-existent document as the last will of her father, who died in 1877. At his funeral his wife produced a written paper in the form of a will, stating that it was the will of the deceased. By it she took a life interest in the property, which, after her death, was to be divided among children of her marriage with the testator. The document was subscribed with three names, one of which purported to be that of the deceased, written with his own hand. The other two names were the signatures of the attesting witnesses. The widow continued to occupy the freehold house and land where the deceased had lived (and which was the only property left by him) until her own death, which occurred in July, 1885. She never took any steps to prove what she had alleged to be the will of her late husband, and at her death the paper produced at the funeral was not forthcoming. The plaintiff propounded that document, and pleaded that, although it had disappeared, the Court ought to grant a probate of it. No attempt had been made to show that the paper bore any date whatever, or that it contained an attestation clause to the names of the two witnesses. The Court below pronounced for the paper, the contents of which had been proved in the course of the trial:—Held, on appeal (diss. Cotton, L. J.), that the decision was justifiable, having regard to the circumstances (*e*). Probate of lost will granted after several years.

The following are more recent cases on the subject of lost or missing wills:— Recent decisions as to.

Where a testator executed a codicil described as "a codicil to my will made some years ago," and, after his death no trace of the codicil could be found; the Court granted probate of the codicil (*f*). 1892.

(*e*) *Harris* v. *Knight* (1890), 15 P. D. 170; 62 L. T. 507. See also Wms. on Exors. 10th ed. p. 293, note (*i*).

(*f*) *Clements, In goods of*, (1892) P. 254. See also *Berry, In goods of*

Lost wills: Recent decisions as to.

1896.

1899.

Although the contents of a lost will still cannot, as a rule, be proved on motion, without the consent of the next of kin (*g*), the Court will now, in the case of a small estate, entertain an application to prove the contents of a lost will upon motion, without requiring, as an absolute condition, the consent of all persons interested in the estate (*h*).

1900.

The presumption arising from the facts of a will being traced into the testator's possession and its non-production at his death, that it was destroyed by him *animo cancellandi*, can only be rebutted by such evidence as produces moral conviction that it was not so destroyed (*i*).

(1892), 65 L. T. 763; *Attlay, In goods of* (1892), 67 L. T. 502; *Flood* v. *Russell* (1892), 29 L. R. Ir. 91.

(*g*) *Pearson, In goods of*, (1896) P. 289; 66 L. J. P. 8.

(*h*) *Apted, In goods of*, (1899) P. 272; 68 L. J. P. 123; 81 L. T. 459.

(*i*) *Allan* v. *Morrison*, (1900) A. C. 604; 69 L. J. P. C. 141; where the will of a lunatic testatrix was in existence after her admission to a lunatic asylum, and was not forthcoming after her death; the Court granted probate of a draft of her will, with the consent of the receiver of her property appointed under the Lunacy Act, 1890: *Crandon, In goods of* (1901), 84 L. T. 330.

CHAPTER XIII.

OF WHAT PROBATE GRANTED — INTERLINEATIONS, ALTERATIONS, ERASURES, AND OBLITERATIONS (*a*).

1 Vict. c. 26, s. 21. Obliterations, interlineations, &c.

By sect. 21 of the Wills Act (1 Vict. c. 26), it is enacted (*b*), "That no obliteration, interlineation, or other alteration made in any will after the execution thereof, shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will."

"*Shall not be apparent*," meaning of.

The words "shall not be apparent" mean "apparent on an inspection of the instrument itself" (*c*).

Words inserted in different ink or

The mere circumstance of the amount, or the name of a legatee, being inserted in different ink and in a different

(*a*) As to interlineations, alterations, erasures and obliterations before January 1st, 1838, see Powles' Browne on Probate (Sweet & Maxwell), 1881, pp. 128, 129; and Wms. on Exors. 8th ed. Pt. I. Bk. II. Chap. 3, sect. 1. See also *Swinton* v. *Bailey* (1879), 1 Ex. D. 110; 4 A. C. 70; 48 L. J. Ex. 57; 39 L. T. 581.

(*b*) As to interlineations, &c., since the passing of the Wills Act, see Wms. on Exors. 10th ed. pp. 99—101, 106—114, 240.

(*c*) See *Townley* v. *Watson* (1844), 3 Curt. 761; *McCabe, In goods of* (1873), L. R. 3 P. & D. 94; 42 L. J. P. 79; 29 L. T. 249; *Horsford, In goods of* (1875), L. R. 3 P. & D. 211; 44 L. J. P. 9; 31 L. T. 553.

different handwriting.

handwriting does not alone constitute an obliteration, interlineation or other alteration within the meaning of the statute, nor does any presumption arise against a will being duly executed as it appears (*d*). The case is different where there is an erasure apparent on the face of the will, and that erasure has been superinduced by other writing; under such circumstances the burden of proof lies upon the party setting up such alteration to show that the words were inserted before execution, and that they had the sanction of the testator (*e*).

Presumption as to alterations and erasures.

Where material alterations and erasures appear on the face of a testamentary paper, in the absence of evidence, the presumption of law is that they were made after the execution of the will (*f*). And this presumption will not be rebutted merely by the fact that such alterations are dated in the handwriting of the testator, and bear a date earlier than that of the execution of the will (*g*), unless, indeed, by consent.

Trifling alterations in holograph will.

Where some trifling alterations and interlineations appeared on the face of a holograph will, and there was no evidence whether they were written before or after the execution, except the affidavit of an expert that, in his opinion, they were written at the same time as the rest of the will, the Court admitted them to probate (*h*).

Alterations in will of soldier on actual military service.

Where alterations and erasures appeared in the will of a soldier made whilst on military service; the Court held, that the presumption was that they were made during the continuance of such military service (*i*).

(*d*) *Greville* v. *Tylee* (1850), 7 Moo. P. C. 320.

(*e*) *Williams* v. *Ashton* (1859), 1 Johns. & H. 115; 3 L. T. 177.

(*f*) *Cooper* v. *Bockett* (1843), 3 Curt. 659; 4 Notes of Cas. 685; 4 Moo. P. C. 149; *Cadge, In goods of* (1868), L. R. 1 P. & D. 543; 37 L. J. P. 15; 17 L. T. 484; *Doe* v. *Palmer* (1851), 16 Q. B. 747; 20 L. J. Q. B. 367; but see *Sykes, In goods of* (1873), L. R. 3 P. & D. 26; 42 L. J. P. 17; 28 L. T. 142.

(*g*) *Adamson, In goods of* (1874), L. R. 1 P. & D. 253.

(*h*) *Hindmarch, In goods of* (1867), L. R. 1 P. & D. 307; 35 L. J. P. 24; 15 L. T. 391.

(*i*) *Tweedale, In goods of* (1875),

Where on one page were the words and mark : "I leave the whole of my property to the following religious societies, viz., X to be divided in equal shares among them," and on the top of the opposite page was a similar mark to that following the "*viz.*," and the names of four religious societies: the Court in the absence of evidence excluded the four names from probate (*k*). Name of legatee on opposite page.

But where an unfinished bequest in the body of a will was completed on the back of the page, and the place where the indorsement was to be read into the will was marked by an asterisk, and there was evidence that it was written before the execution of the will; it was ordered to be included in the probate (*l*). Bequest completed by indorsement.

Where the clause appointing executors was written partly on the second and partly on the third side of a will; and subsequently the testator altered the clause, but his signature and those of the attesting witnesses appeared opposite only to the alterations, which were made on the second side, the Court granted probate of all the alterations (*m*). Attestation of alterations.

Where a will contained several allusions to "*my executors hereinafter named* X (*sic*)." At the end of the will, below the attestation clause, was written, "X *Executors, Wm. Greenwood and Wm. Sutcliffe* (*sic*)." The name "William Sutcliffe" was written on an erasure, under which some letters forming part of the name "*Charles Stanfield*" were distinctly visible. On evidence that the name "Charles Stanfield" had been erased and the name "Wm. Sutcliffe" substituted by the testator subsequent to execution, without any formal re-execution of the will: the Court ordered probate of the will with the clause appointing executors incorporated therein, and that the Clause appointing executors written below attestation clause.

L. R. 3 P. & D. 204; 44 L. J. P. 35; 31 L. T. 799.

(*k*) *White, In goods of* (1861), 30 L. J. P. 161.

(*l*) *Burt, In goods of* (1877), L. R. 2 P. & D. 214; 40 L. J. P. 26; 24 L. T. 142.

(*m*) *Wilkinson, In goods of* (1881), 6 P. D. 100.

Clause appointing executors written below attestation clause.

name of "Wm. Sutcliffe" be omitted from the probate, and so much of the name "Charles Stanfield" as could be deciphered inserted therein (*n*).

Interlineations consisting of single words necessary to complete sentence.

Where a will contained several unattested interlineations, most of them of single words, each of which was required to complete the sentence to which it belonged: they were apparently written with the same ink and at the same time as the rest of the will; but at the time of execution the body of the will was covered up by the testatrix, so that the witnesses could not see whether the interlineations were there or not: they were included in the probate (*o*).

Alterations previous to execution of codicil.

Where a testator on the 28th of April, 1847, executed a draft will, in which after his death were found interlineations and cancellations, some in ink and some in pencil; in May, 1847, he executed an engrossed will, and in 1854 he executed a codicil which purported to be a codicil of the will of April, 1847; it appearing that the engrossed will was copied from the will of April, 1847, and that it corresponded with it as altered in ink, and consequently that the latter will was so altered before the date of the codicil, the Court granted probate of the will of April, 1847, as altered in ink, and of the codicil of 1854 (*p*).

So also, interlineations and alterations in a will were admitted to probate, where it was proved that they had been inserted before the date of the execution of a codicil to the will (*q*).

Alteration unattested: Will in custody of executor

Where, on the testator's death, an alteration appeared in a will, which, during his lifetime, was in the custody of the writer (one of the executors), who swore such alteration was made with the testator's concurrence, but gave no

(*n*) *Greenwood, In goods of*, (1892) P. 7; 61 L. J. P. 56; 66 L. T. 61. See also *Harris, In goods of* (1859), 1 S. & T. 536.

(*o*) *Cadge, In goods of* (1868), L. R. 1 P. & D. 543; 37 L. J. P. 15; 17 L. T. 484.

(*p*) *Wyatt, In goods of* (1862), 2 S. & T. 494; 31 L. J. P. 197; 6 L. T. 694.

(*q*) *Tyler* v. *Merchant Taylors' Company* (1890), 15 P. D. 216; 60 L. J. P. 86; 63 L. T. 779.

further explanation, the Court ordered probate of the will to issue in its original state (*r*). insufficient explanation.

A line drawn through with pencil is not an obliteration, but is merely regarded as something deliberative. Alterations in pencil.

So where a testatrix executed her will on a printed form, and the blanks were filled up by her in her own handwriting partly with ink and partly with pencil, and the words in ink were sensible as read with the printed part of the will; the Court held that the words in pencil were deliberative only and probate was granted without them (*s*). Deliberative.

Where a testatrix, after the execution of her will, erased certain parts thereof, substituting in their places other words, probate was granted of the will with those parts erased in blank, the original words not being discernible on the face of the paper (*t*). Erasure. Substituted bequest. Probate in blank.

Declarations of a testator made after the execution of a will are admissible in evidence to show that an erasure was made after execution (*u*). Declarations of testator.

In *Horsford, In goods of* (*x*), where a strip of paper had been pasted over a whole legacy, Sir James Hannen said: "It has not been the practice to adopt any means of ascertaining what the words, attempted to be obliterated, were, other than mere inspection by aid of glasses. Chemical agents have not been resorted to in order to remove any portion of the obscuring ink, and I do not think it would be proper to adopt such means. I think that the word 'apparent,' in section 21, means 'apparent on the face of the Piece of paper pasted over legacy.

(*r*) *Parker* v. *Hickmoott* (1828), 1 Hagg. 211.

(*s*) *Adams, In goods of* (1872), L. R. 2 P. & D. 367; 41 L. J. P. 31; 26 L. T. 526. See also *Hall, In goods of* (1871), L. R. 2 P. & D. 256; 40 L. J. P. 37; 25 L. T. 384.

(*t*) *James, In goods of* (1859), 1 S. & T. 238. See also, as to erasures, *Coleman, In goods of* (1861), 2 S. & T. 314; 30 L. J. P. 170; 5 L. T. 119.

(*u*) *Gould* v. *Lakes* (1881), 6 P. D. 1; 49 L. J. P. 59; 43 L. T. 382. See also *Dench* v. *Dench* (1877), 2 P. D. 60; 46 L. J. P. 13.

(*x*) (1875) L. R. 3 P. & D. 211; 44 L. J. P. 9; 31 L. T. 553. See Wms. on Exors. 10th ed. pp. 107, 108. See also *Parr, In goods of* (1860), 29 L. J. P. 70.

Meaning of word "*apparent*" in sect. 21.

instrument' in the condition in which it was left by the testator, and that if he had had recourse to extraordinary means to obliterate what he had written, then this Court is not bound to take any steps to undo what he has done. The statute does not draw any distinction between modes of obliteration. The effacement of the original writing as performed by the testator, by pasting paper over it, is complete, and I see no reason why the Court should remove the pasted paper used as the instrument of obliteration, rather than ink used for the same purpose. I shall therefore give no directions on the subject as far as the will is concerned, and, assuming that the words covered over cannot be ascertained by inspection, the probate must go with those parts in blank."

Memorandum referring to alterations.

A testator in the beginning of his will disposed of certain leasehold houses in trust for the benefit of his children. The words of the description of one of these houses were struck through by a pen, and the testator's signature (but not those of the witnesses) was placed near this alteration. At the end of the will a clause was interlined, by which he bequeathed the same house to his trustees for the sole benefit of his wife, and under the signatures of the testator and the witnesses at the termination of the will a memorandum was added, to the effect that the words above were struck out for the benefit of his wife, and this memorandum was signed by the testator and attested by the witnesses. The Court held that the memorandum referred to both alterations—the obliteration and the interlineation—and that the will so altered ought to be admitted to probate (*y*).

Probate in *facsimile*.

The Court is sometimes unable to distinguish how much of the alleged writing constitutes the actual will of the deceased: therefore, in every case where the construction of the will may be affected by the appearance of the original paper, the Court will order the probate to pass in *facsimile* (*z*).

(*y*) *Treeby, In goods of* (1875), L. R. 3 P. & D. 242; 44 L. J. P. 44.

(*z*) See *Raine, In goods of* (1865),

The following are some of the more recent decisions on the subject of the foregoing chapter :—

Memorandum referring to alterations.

A testator made an interlineation in his will giving "£1,000 to each of my executors." In the body of the will he gave a legacy of £10,000 to one of his executors. Subsequently in a codicil he recited that he had given a legacy of £11,000 to this particular person : the Court held that the reference showed that the interlineation had been made prior to the execution of the codicil, and was incorporated by it (*a*).

1892. Interlineation.

Words beneath obliterations, erasures, or alterations on a testamentary document are "apparent" within the meaning of sect. 21, if experts using magnifying glasses can decipher them and satisfy the Court that they have done so ; but it is not allowable to resort to any physical interference with the document. Slips of paper, which could have been removed leaving the document intact, were, after execution, pasted over certain words in a will, which could be read by an expert, on placing a piece of brown paper round them and holding the will against a window pane. Held, that as the words could be read as above, they were apparent within the meaning of the section (*b*).

1894. Obliteration.

34 L. J. P. 125 ; *Smith, In goods of* (1865), 3 S. & T. 889 ; 34 L. J. P. 19 ; 11 L. T. 684.

(*a*) *Heath, In goods of*, (1892) P. 253 ; 61 L. J. P. 131 ; 67 L. T. 356. See also *Tonge, In goods of* (1892), 66 L. T. 60.

(*b*) *Efinch* v. *Combe*, (1894) P. 191 ; 63 L. J. P. 113 ; 70 L. T. 695. See also *Brasier, In goods of*, (1899) P. 36 ; 68 L. J. P. 6 ; 79 L. T. 472.

CHAPTER XIV.

OF ADMINISTRATION WITH THE WILL ANNEXED (*a*).

Administration with will annexed: Grants of.

THE office of an administrator with the will annexed differs little from that of an executor, except in one important particular, namely, that an administrator with the will annexed has to give security for the faithful discharge of his duties, from which condition an executor, being the person appointed by the deceased himself to take charge of his estate, is exempt. The will to which the administration is annexed must be proved exactly in the same way as though probate were taken of it by an executor.

21 Hen. VIII. c. 5, s. 3.

The first provision for such a mode of administration is to be found in 21 Hen. VIII. c. 5, s. 3, which provides that, whenever any person die intestate or "the executors named in any testament refuse to prove the said testament, then the ordinary or other person or persons having authority to take probate of testaments . . . . shall grant the administration of the goods of the testator or person deceased to the widow of the same person deceased, or the next of his kin, or to both, as to the discretion of the same ordinary shall be thought good" (*b*).

Majority of interest preferred.

This statute provides only for the case of an executor refusing to prove, and therefore many of the cases above contemplated are outside its provisions. "Consequently, in such instances the Court is left to the exercise of its own discretion in the choice of an administrator according to its own practice" (*c*).

(*a*) See Wms. on Exors. 10th ed. pp. 319, 370—379.

(*b*) *Ibid.* p. 319.

(*c*) *Ibid.* p. 371.

Administration with will annexed: Grants of.

Majority of interest preferred.

But the Court pays deference to the wishes of the deceased, not only in carrying them out as expressed in his will, but also in confiding the duty of administering his effects to the person selected by him. It was therefore the practice of the Ecclesiastical Courts, and is the present practice of the Probate Division, in all cases, whether within the statute or not (except under peculiar circumstances), to consider which of the claimants to *administration with the will annexed* has the greatest interest in the effects of the deceased, and to prefer such person to the widow or next of kin in spite of the provisions of 21 Hen. VIII. c. 5, s. 3.

Residuary legatee preferred.

It follows, therefore, that if there be a bequest of the residue in a will, the Court will prefer the residuary legatee, in granting *administration with the will annexed*, to the widow or next of kin, and even to legatees. And this is so even when there is no prospect of any residue, and although the claimant be merely residuary legatee in trust (*d*).

Next of kin has *primâ facie* right.

"However, the next of kin has, subject to the rights of the heir-at-law in cases coming within the operation of the Land Transfer Act, 1897, a *primâ facie* right, and therefore, where a party claims as, or derivatively from, a residuary legatee, or residuary devisee, in cases coming within the Land Transfer Act, 1897, the burden of proof lies on such party. Hence, where the husband appointed his wife executrix and residuary legatee, and he and his wife were drowned in the same ship, the Court granted administration to the next of kin of her husband, on the ground that the next of kin of the wife had not proved her survivorship.

Representative of deceased residuary legatee.

"Where the residuary legatee survives the testator, and has a beneficial interest, his representative has the same right to *administration with the will annexed* as the residuary

(*d*) See Wms. on Exors. 10th ed. p. 372.

Administration with will annexed: Grants of.

legatee himself, and is preferred to the next of kin or to legatees" (*e*).

The residuary legatee is entitled to the grant even though only residuary legatee in trust (*f*); "but, . . . where the residuary legatee is a mere trustee, without any beneficial interest, it is the ordinary rule of practice, in the absence of special circumstances, upon his death to grant the administration, not to his representative, but to such person or persons as have the beneficial interest in the residuary estate" (*g*).

In default of residuary legatee, who entitled, legatee or creditor.

If there be no residuary clause, or if the residuary legatee from any cause does not obtain the grant, the right to *administration with the will annexed* falls, subject to the rights of the heir-at-law in cases coming within the Land Transfer Act, 1897, to the widow or next of kin; but if they have no interest in the effects, or refuse the grant, the Court may make it to any one interested in the estate, such as a legatee or a creditor, but it is usual to give notice of the application of the legatee or creditor to the next of kin (*h*).

Where a sole executrix and universal legatee, being the illegitimate daughter of the testatrix, had not been heard of for forty years, a grant was made to the next of kin (*i*); and where there were no known relatives and no residuary legatee was appointed, a grant was made to a stranger (*k*).

(*e*) Wms. on Exors. 10th ed. p. 373.

(*f*) *Ibid.* p. 372.

(*g*) *Ibid.* p. 374.

(*h*) See *Ibid.* pp. 375, 376. See also *West* v. *Willby* (1819), 3 Phill. 381; *Mayhew* v. *Newstead* (1836), 1 Curt. 593; *Furlonger* v. *Cox* (1811), 3 Phill. 381; *Waters, In goods of* (1862), 2 Robert. 142; *Kooystra* v. *Buyskes* (1821), 3 Phill. 531; *Hinckley, Re* (1828), 1 Hagg. 477; *Snape* v. *Webb* (1757), 2 Cas. temp. Lee, 411; *Newcome* v. *Beloe* (1867), L. R. 1 P. & D. 314; 36 L. J. P. 37; 16 L. T. 33; *Jordan, In goods of* (1868), L. R. 1 P. & D. 555; 37 L. J. P. 22; *Aston, In goods of* (1881), 6 P. D. 203; 50 L. J. P. 77.

(*i*) *Ley, In goods of*, (1892) P. 6; 61 L. J. P. 110; 65 L. T. 762.

(*k*) *Jackson, In goods of*, (1892) P. 257; 61 L. J. P. 126; 67 L. T. 327.

Administration with will annexed: Grants of.

If there are several persons entitled to the residue the grant may be made to any of them (*l*).

Where the executor and residuary legatee were both drowned at the same time, the Court made the grant to the testator's widow (*m*).

To nominee of corporation appointed executor.

Where the executor is a corporation aggregate the grant will be made to its syndic, *i.e.*, a person appointed by the corporation for that purpose (*n*).

To attorney of personal representative appointed by Court of domicil.

Where an Englishman domiciled abroad died abroad, leaving a will dealing with property in this country, the Court made the grant to the attorney of the person who had been appointed his personal representative by the Court of his domicil (*o*).

Sister of testator preferred to widow.

The Court preferred the sister of the testator to the widow in a case where she had a larger interest in the property (*p*).

To guardian elected by minor.

The Court will grant administration with the will annexed for the use and benefit of minors to guardians elected by them (*q*).

Sole legatee.

The Court usually requires the next of kin to be cited before making the grant to the sole legatee (*r*).

No obligation on Court to make grant in favour of residuary legatee.

It must always be remembered that it is not obligatory on the Court to grant *administration with the will annexed* to the residuary legatee; and, under the old practice, a

(*l*) Wms. on Exors. 10th ed. p. 371, note (l), citing *Taylor* v. *Shore* (1670), T. Jones, 162; Com. Dig. Administrator (B. 6); *Dampier* v. *Colson* (1812), 2 Phill. 54; *Stainton, In goods of* (1871), L. R. 2 P. & D. 212; 40 L. J. P. 25; 24 L. T. 320.

(*m*) *Carmichael, In goods of* (1863), 4 S. & T. 224; 32 L. J. P. 70.

(*n*) *Darke, In goods of* (1860), 1 S. & T. 516; 29 L. J. P. 71; 2 L. T. 24.

(*o*) *Rule, In goods of* (1879), 4 P. D. 76; 47 L. J. P. 32; 39 L. T. 123.

(*p*) *Homan, In goods of* (1884), 9 P. D. 61; 52 L. J. P. 94.

(*q*) *Gardiner, In goods of* (1884), 9 P. D. 66; 53 L. J. P. 31; *Webb, In goods of* (1888), 13 P. D. 71; 57 L. J. P. 36; 58 L. T. 683; *Sawbridge* v. *Hill* (1871), L. R. 2 P. & D. 219; 40 L. J. P. 27; 24 L. T. 320.

(*r*) *Watson, In goods of* (1858), 1 S. & T. 110; 27 L. J. P. 7; *Watts, In goods of* (1860), 1 S. & T. 538; 29 L. J. P. 108.

Administration with will annexed: Grants of.

mandamus was not granted to compel the Ecclesiastical Court to adopt such a course, unless, indeed, where the same person was residuary legatee and next of kin (*s*).

Mere consent of executor not sufficient to entitle residuary legatee to grant.

The mere consent of an executor is not sufficient to entitle the residuary legatee to the grant (*t*).

Residuary legatee for life.

When there is a residuary legatee for life, and a legatee substituted, the usual course is to make the grant to the legatee for life; but the Court will not adopt this course, if by doing so it would involve the determination of a difficult point in the construction of a will (*u*).

Person entitled as executor.

A person entitled to probate as executor is not allowed to take administration with the will annexed, for if a person be entitled to a grant in a superior character the Court will not make that grant to him in an inferior character (*x*).

Executor not known.

Where a testator appointed an executor that no one had ever heard of, and who could not be discovered, the Court made the grant to one of the residuary legatees (*y*).

Universal legatee entitled to administration with the will annexed.

A universal legatee, as distinguished from a residuary legatee, is entitled as of right to a grant of administration with the will annexed, though not to probate (*z*).

Words held to constitute beneficiaries residuary legatees.

The following words have been held to constitute the beneficiaries universal legatees: "All the property I may be possessed of at my death" (*a*).

(*s*) Wms. on Exors. 10th ed. p. 374.

(*t*) *Garrard* v. *Garrard* (1872), L. R. 2 P. & D. 238; 25 L. T. 162.

(*u*) *Brown* v. *Nicholls* (1852), 2 Robert. 399.

(*x*) *Bullock, In goods of* (1847), 1 Robert. 273; *Richardson, In goods of* (1860), 1 S. & T. 515; 1 L. T. 448; *Morrison, In goods of* (1861), 2 S. & T. 129; 3 L. T. 786.

(*y*) *Sawtell, In goods of* (1862), 2 S. & T. 448; 31 L. J. P. 65; 6 L. T. 395. See also *Podmore* v. *Whatton* (1864), 3 S. & T. 449; 33 L. J. P. 143; 10 L. T. 754.

(*z*) *Oliphant, In goods of* (1851), 1 S. & T. 525; 30 L. J. P. 82; 1 L. T. 446.

(*a*) *Goodyar, In goods of* (1858), 1 S. & T. 127; *Scarborough, In goods of* (1861), 30 L. J. P. 85. And see further, as to what constitutes a universal legatee, *Oliphant, In goods of, supra; Laneuville* v. *Anderson* (1861), 2 S. & T. 24; 30 L. J. P. 25; 3 L. T. 304.

Administration with will annexed: Grants of.

All my personal effects, and everything of every kind "that I have now or may have at the time of my decease, at my apartments at A. or elsewhere" (*b*).

Words held to constitute beneficiaries residuary legatees.

A gift to a legatee of the remainder of money, goods, and debts due to the testator, after payment of debts, &c., constitutes him residuary legatee (*b*); and the words "*to my legal heirs and theirs for ever*" were held to constitute the heir-at-law residuary legatee of the personalty as well as the realty (*c*).

"What is left, my books and furniture, and all other things," are words sufficiently comprehensive to cover the general residue (*d*); and the Court has held that the words "*other effects*" constituted the beneficiary residuary legatee (*e*).

Residue divided equally between testator's children.

Where a testator bequeathed the residue of his personal estate to be equally disposed of between five of his children, whom he named, and one of those children died in his lifetime, the Court held that the five children took as tenants in common, and refused to make the grant to one of the sons of the testator, *as a legatee*, but made the grant to him as one of the next of kin, entitled to a share in the undisposed residue (*f*).

Recent cases as to.

The following are some of the more recent cases, in order of date, in which the Court has made grants of administration with the will annexed:—

1892.

Where a husband and wife made identical wills and

(*b*) *Bloomfield, In goods of* (1862), 31 L. J. P. 119.

(*c*) *Dixon, In goods of* (1879), 4 P. D. 81; 87 L. J. P. 57; 39 L. T. 234.

(*d*) *Cadge, In goods of* (1868), L. R. 1 P. & D. 543; 37 L. J. P. 15; 17 L. T. 485. See also *Sharman, In goods of* (1869), L. R. 1 P. & D. 661; 38 L. J. P. 47; 20 L. T. 683.

(*e*) *Jupp, In goods of*, (1891) P. 300; 60 L. J. P. 92; 65 L. T. 166. But see *contra*, *O'Loughlin, In goods of* (1870), L. R. 2 P. & D. 102; 39 L. J. P. 53.

(*f*) *Pile, In goods of* (1862), 2 S. & T. 628; 31 L. J. P. 40; 7 L. T. 194.

Administration with will annexed: Recent cases as to.

were drowned in the same ship, the grant was made to one of the next of kin of each, as in intestacy (*g*).

1893. A testator having executed his will in which he appointed his wife sole executrix and universal legatee, subsequently lost it. He then executed a second will in which he appointed his wife universal legatee but omitted to appoint her executrix. Administration granted to the widow with the second will annexed (*h*).

1895. Where an executor was ill, the Court made a grant to the residuary legatee for life, for the use and benefit of the executor until his recovery (*i*).

1895. A testatrix bequeathed the residue of her estate to a trustee for the benefit of a Roman Catholic convent. Both the trustee and the executor of the will having died in the lifetime of the testatrix, the Court made a grant to the reverend mother of the convent as residuary legatee, on proof of the permanence of the institution and the fitness of the reverend mother, having regard to her powers, to receive and apply the legacy (*k*).

1896. Where a limited company were appointed executors and trustees, the grant was made to the general manager of the company (*l*).

1898. In granting, for the purpose of a conveyance, administration limited to certain leasehold property of a testator, the Court held that the will should be annexed to the grant (*m*).

(*g*) *Alston, In goods of*, (1892) P. 142. See also *Thompson, In goods of* (1892), 67 L. T. 357.

(*h*) *Allen, In goods of*, (1893) P. 184; 62 L. J. P. 111; 68 L. T. 462.

(*i*) *Ponsonby, In goods of*, (1895) P. 287; 64 L. J. P. 119. See also *Arms, In goods of* (1895), 71 L. T. 699; *Hockin, In goods of* (1895), 73 L. T. 316; *Dodsworth, In goods of* (1895), 73 L. T. 315.

(*k*) *M'Auliffe, In goods of*, (1895) P. 290; 64 L. J. P. 126; 73 L. T. 193. See also *Lalor, In goods of* (1902), 71 L. J. P. 17; 85 L. T. 643.

(*l*) *Hunt, In goods of*, (1896) P. 288; 66 L. J. P. 8.

(*m*) *Butler, In goods of*, (1898) P. 9; 67 L. J. P. 15. As to the person entitled to the grant since the coming into operation of the Land Transfer Act, 1897, see

"Even where the husband consents, the Court will refuse to grant probate to the executor named in the will of a married woman who dies abroad; but, with such consent, will make a grant of administration with the will annexed to the person named in the will as executor" (*n*). Administration with will annexed: Recent cases as to. 1901.

Where a testator died domiciled in Belgium leaving a will and codicil in English form, appointing executors, and also a Belgian will, the Court made a grant of administration with all the three documents annexed, to two persons who had been appointed administrators of the deceased's estate abroad, in accordance with the law of his domicil (*o*). 1903.

The universal devisee and legatee of a testamentary paper, in which no executor is named, is entitled to administration with the will annexed, but not to probate according to the tenor of the will. The practice of the Probate Court hitherto prevailing in this respect has not been altered by the Land Transfer Act, 1897 (*p*). 1904.

A testator by his will, made upon a printed form with holograph additions, bequeathed to his wife "all his messuages, lands, tenements, and hereditaments, and all his household furniture, ready money, goods and chattels, and all other his real and personal estate and effects whatsoever and wheresoever, to and for her own absolute use and benefit, and after her death to come absolutely" to another person "to her and her heirs for ever," and proceeded to appoint his wife executrix; the Court held that 1905.

Roberts, In goods of, (1898) P. 149; 67 L. J. P. 71; 78 L. T. 390; and for cases decided in 1899, *Wright, In goods of* (1899), 79 L. T. 473; *Scarr, In goods of* (1899), 80 L. T. 296; *Tréfond, In goods of*, *post*.

(*n*) Wms. on Exors. 10th ed. p. 377, citing *Vannini, In goods of*, (1901) P. 330; 71 L. J. P. 7; 85 L. T. 639; *Tréfond, In goods of*, (1899) P. 247; 68 L. J. P. 82; 81 L. T. 56. See, for another grant made in 1901, *Byrne, In goods of* (1901), 84 L. T. 570.

(*o*) *Meatyard, In goods of*, (1903) P. 125; 72 L. J. P. 25; 89 L. T. 70.

(*p*) *Pryse, In re*, (1904) P. 301; 73 L. J. P. 84; 90 L. T. 747, C. A.

Administration with will annexed: Grants of.

the wife took a life interest only, and that the later person was residuary legatee, and as such entitled to the grant as against the executor of the wife, who had died without having taken probate of her husband's will (*q*).

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 73.

Since, however, the passing of the 73rd section of the Court of Probate Act, 1857, the powers of the Court as to whom it shall or shall not grant administration, either with or without the will annexed, have been enlarged to an all but unlimited extent. This section enacts that "Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the Court to be necessary or convenient in any such case, *by reason of the insolvency of the estate of the deceased or other special circumstances*, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who if this Act had not been passed would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who, if this Act had not passed, would by law have been entitled to a grant thereof, but it shall be lawful for the Court, in its discretion, to appoint such person as the Court shall think fit, to be such administrator upon his giving such security (if any) as the Court shall direct, and every such administration may be limited as the Court shall think fit" (*r*).

Grants of ad-

In the following cases the Court made grants of ad-

(*q*) *Lupton, In goods of,* (1905) P. 321; 74 L. J. P. 321.

(*r*) See Wms. on Exors. 10th ed. pp. 356—359.

ministration with the will annexed under sect. 73, by reason of *special circumstances* :—

ministration with the will annexed by reason of special circumstances under sect. 73.

(1.) By consent, where the executor could not be identified (*s*).

(2.) To the trustee appointed by the will where the Court recognized a deed executed by the deceased as testamentary, but not the appointment of executors therein contained (*t*).

(3.) To nominee of residuary legatee, a married woman, without notice to her husband (*u*).

(4.) To nominee of a married woman residuary legatee, without the consent of her husband, on his objecting to her taking administration (*x*).

(5.) To guardian of minors under special circumstances. Executrix dying in lifetime of testator, next of kin abroad (*y*).

(6.) Where a colonial Court granted probate to a certain legatee as executor according to the tenor of the will; the English Court not feeling able to make the grant in that capacity, made a grant to him under sect. 73 as the person entitled by the proper Court of the deceased's domicil to administer his effects (*z*).

(7.) To a creditor, where the sole executrix and universal legatee was a lunatic (*a*). 1892.

(8.) To partner of executor who was out of the kingdom, 1892.

(*s*) *Sawtell, In goods of* (1862), 2 S. & T. 448; 31 L. J. P. 65; 6 L. T. 395.

(*t*) *Cosnahan, In goods of* (1866), L. R. 1 P. & D. 183; 35 L. J. P. 76; 14 L. T. 337; *Stewart, In goods of* (1875), L. R. 3 P. & D. 244; 44 L. J. P. 37; 33 L. T. 72.

(*u*) *Pine, In goods of* (1867), L. R. 1 P. & D. 388; 36 L. J. P. 95; 17 L. T. 31.

(*x*) *Warren, In goods of* (1868), L. R. 1 P. & D. 538; 37 L. J. P. 12.

(*y*) *See, In goods of* (1879), 4 P. D. 86; 48 L. J. P. 70; 40 L. T. 768; *Batterbee, In goods of* (1889), 14 P. D. 39; 58 L. J. P. 38; 60 L. T. 838.

(*z*) *Earl, In goods of* (1867), L. R. 1 P. & D. 450; 36 L. J. P. 127; 16 L. T. 799.

(*a*) *Atherton, In goods of*, (1892) P. 104.

Administration with will annexed: Grants by reason of special circumstances under sect. 73.

where will contained request that such partner should be appointed in the absence of the executor (*b*).

(9.) To widow of deceased where executor was out of England and not expected to return (*c*).

1893. (10.) To son of widow who had been deserted by her

1894. husband, without citing the husband (*d*).

1899. (11.) To a stranger in blood by consent of all parties interested in the estate (*e*).

1899. (12.) To one of the persons named as residuary legatees, without notice to the executor, who had obtained probate and then left the country in embarrassed circumstances, after drawing 25*l.* out of the estate on account of costs (*f*).

1900. (13.) Where there was no appointment of executors, to one of two persons described thus in the will—"M. E. B. of Port-au-Prince and J. B. W. of Liverpool will carry out my last wishes" (*g*).

1903. (14.) Will bequeathing a specific legacy, but neither disposing of any other property nor appointing an executor. Grant to legatee limited to property bequeathed in the will (*h*).

In order to satisfy the Court that it is "necessary and convenient" that the extraordinary powers given it by

(*b*) *Taylor, In goods of*, (1892) P. 90; 61 L. J. P. 93; 66 L. T. 266. See also *Sharland, In goods of* (1892), 67 L. T. 501; *Shirley, In goods of* (1892), 66 L. T. 590; *Hill, In goods of* (1892), 66 L. T. 380.

(*c*) *Craushay, In goods of*, (1893) P. 108; 62 L. J. P. 91; 68 L. T. 260.

(*d*) *Shoosmith, In goods of*, (1894) P. 23; 63 L. J. P. 64; 70 L. T. 809. But see *Callicott, In goods of*, (1899) P. 189; 68 L. J. P. 67; 80 L. T. 421. See also *Bond, In goods of* (1894), 70 L. T. 813. See also *Hockin, In goods of* (1895), 71 L. T. 316, for a grant to guardian of minors; *Lilley, In goods of* (1897), 76 L. T. 164.

(*e*) *Potter, In goods of*, (1899) P. 265; 68 L. J. P. 97; 81 L. T. 234.

(*f*) *Massey, In goods of*, (1899) P. 270; 68 L. J. P. 127; 81 L. T. 493.

(*g*) *Moffatt, In goods of*, (1900) P. 152; 69 L. J. P. 98.

(*h*) *Baldwin, In goods of*, (1903) P. 61; 72 L. J. P. 23.

sect. 73 should be made use of, a general statement that "it is necessary for the preservation of the estate of the deceased" is not sufficient (*i*).

Administration with will annexed: Grants of, under sect. 73.

Generally speaking, the Court will not make a grant under this section to a person entitled in another character, as *e.g.*, a creditor (*k*); nor to the nominee of the person entitled to the grant (*l*).

The Court will not under this section pass over a person entitled to administration with the will annexed, as a residuary legatee, in favour of a creditor, when the fact of the insolvency of the estate is disputed (*m*); neither can it pass over an executor by reason of his bad character only; he must also be out of the country (*n*).

38 Geo. III. c. 87, s. 1. "*Durante absentiâ.*"

By 38 Geo. III. c. 87, s. 1, if the executors or executor to whom probate of a will shall have been granted are or is residing out of the jurisdiction of the Court, at the expiration of twelve months from the death of the testator, the Court is empowered, upon the application of any creditor, next of kin, or legatee, grounded upon an affidavit specified in the Act, to grant such special administration as is specified in the Act.

"*Durante minore ætate.*"

By sect. 6 power is given to the Court, wherever an infant is appointed sole executor, to grant administration with the will annexed to the guardian of such infant, or to such person as the Court shall think fit, until such infant attain the age of twenty-one years.

The special administration contemplated by this Act

(*i*) *Cooke, In goods of* (1859), 1 S. & T. 267; 28 L. J. P. 43; *Bateman, In goods of* (1871), L. R. 2 P. & D. 242; 40 L. J. P. 24; 24 L. T. 399.

(*k*) *Fairweather, In goods of* (1861), 2 S. & T. 588; 6 L. T. 788.

(*l*) *Teague* v. *Wharton* (1872), L. R. 2 P. & D. 360; 41 L. J. P. 13; 25 L. T. 764; *Hale, In goods of* (1875), L. R. 3 P. & D. 207; 44 L. J. P. 45; 31 L. T. 799.

(*m*) *Hawke* v. *Wedderbourne* (1868), L. R. 1 P. & D. 594; 37 L. J. P. 33; 18 L. T. 336.

(*n*) *Samson, In goods of* (1873), L. R. 3 P. & D. 48; 42 L. J. P. 59; 28 L. T. 478.

Administration with will annexed: Grants of. *Durante minore ætate.* C. P. Act, 1857, s. 74. C. P. Act, 1858, s. 18.

was, however, merely in cases where it was necessary to appoint somebody to carry on proceedings in Chancery.

Now, however, by the 74th section of the Court of Probate Act, 1857, and the 18th section of the Court of Probate Act, 1858, the provisions of this statute are extended, 1st, to cases of intestacy; and 2ndly, to all cases, without regard to the question of whether proceedings in Chancery are likely to arise or not (*o*).

(*o*) See Wms. on Exors. 10th ed. pp. 159, 387, 391, 392, 394, 404, 407, 731.

CHAPTER XV.

AS TO HOW GRANTS OF PROBATE AND ADMINISTRATION ARE AFFECTED BY THE DOMICIL OF THE DECEASED TESTATOR OR INTESTATE, AND BY THE SITUS OF HIS PROPERTY, AND OF WILLS MADE UNDER THE PROVISIONS OF THE STATUTE 24 & 25 VICT. C. 114.

Locality of estate.

If a testator or intestate was domiciled in a foreign country, or within the King's dominions out of England, and left assets in this country, probate or administration must be taken out here as well as in the country of domicil (*a*). But if he left no assets in this country, the Court of Probate has no jurisdiction to make any grant in respect of his estate (*b*).

But it is otherwise if the deceased were domiciled in

(*a*) See Wms. on Exors. 10th ed. p. 338, citing *Le Briton* v. *Le Quesne* (1754), 2 Cas. temp. Lee, 261; *Att.-Gen.* v. *Bouwens* (1838), 4 M. & W. 193; 7 L. J. Ex. 297. See also *Preston* v. *Lord Melville* (1841), 8 Cl. & Fin. 1.

(*b*) *Ibid.*, citing *Tucker, In goods of* (1865), 3 S. & T. 585; 34 L. J. P. 29; *Evans* v. *Burrell* (1859), 4 S. & T. 185; 28 L. J. P. 82; *Fittock, In goods of* (1863), 32 L. J. P. 157; *Coode, In goods of* (1867), L. R. 1 P. & D. 449; 36 L. J. P. 129; 16 L. T. 746. But see *Sanders, In goods of*, (1900) P. 292; 69 L. J. P. 121, where the executors of a will, under which a legacy of 250*l.* was payable to "the personal representatives" of the testator's brother, who died intestate in one of the Australian Colonies, leaving no estate in this country, insisted on the re-sealing here of a grant of letters of administration which the brother's widow had obtained in the Colony, and the Court allowed the grant to be re sealed. See also as to sealing and re-sealing generally, *post*, Part II., "Practice."

Grants, how affected by domicil of deceased.

England at the time of his death; for "all moveable personal property follows the person, and the rights of a person constituted in England the representative of a party deceased, *domiciled in England*, are not limited to the personal property in England, but extend to such property wherever locally situated" (*c*).

Will valid by law of deceased's domicil.

Whenever a will has been formally recognized and acted upon by a Court of competent jurisdiction in the country of the domicil of the deceased at the time of his death, and remains unquestioned in that country, the Probate Division will not allow the validity of such will to be litigated here (*d*).

Probate Division as a rule follows grant made by Court of deceased's domicil.

"It is a general rule . . . that when a person dies domiciled in a foreign country, and the Court of that country invests anybody, no matter whom, with the right to administer the estate, this Court ought to follow the grant, simply because it is the grant of a foreign Court, without investigating the grounds on which it was made, and without reference to the principles on which grants are made in this country" (*e*).

The practice of the Court in this respect as it now exists, and the principle on which that practice is founded, are clearly and concisely declared by Lord Penzance in giving judgment in the case of *In goods of Earl* (*f*).

Earl, In goods of. Judgment of Lord Penzance.

His lordship says: "In this case I took time to consider the question to what extent the Court ought to follow a

(*c*) See Wms. on Exors. 10th ed. p. 272, citing *Spratt* v. *Harris* (1832), 4 Hagg. 408; Toller, 36.

(*d*) *Ibid.*, p. 275. See also *Enohin* v. *Wylie* (1862), 10 H. of L. 1; *Crispin* v. *Doglioni* (1860), 1 S. & T. 522; 2 S. & T. 17; 3 S. & T. 96, 99; 29 L. J. P. 130; 3 L. T. 179; affd. nom. *Doglioni* v. *Crispin* (1866), L. R. 1 H. L. 301; 35 L. J. P. 129; 15 L. T. 44; *Whicker* v. *Hume* (1859), 7 H. of L. 124; 28 L. J. Ch. 396; *Miller* v. *James* (1873), L. R. 3 P. & D. 4; 42 L. J. P. 21; 27 L. T. 862.

(*e*) Per Lord Hannen, in *Miller* v. *James*, *supra*, citing from a previous judgment of Lord Penzance.

(*f*) (1867), L. R. 1 P. & D. 450; 36 L. J. P. 127; 16 L. T. 799.

foreign grant of probate, the grant having been made to the applicant by the Court of the country of domicil as executrix according to the tenor. It is admitted that the terms of the will were not such as to constitute the applicant executrix according to the tenor in this country, but the Court is asked to follow the foreign grant in that respect. I have looked into the cases in which questions of this sort have arisen, and I find that for a long time considerable difficulty was felt as to the extent to which foreign grants ought to be followed. In *Larpent* v. *Sindrey* (*g*), Sir J. Nicholl said, 'The form of the grant in India is not exactly according to our practice. Here the two papers would have been proved as together containing the will of the deceased; but the Court in India, which, as the deceased died domiciled there, is the Court of competent jurisdiction, has considered them as a will and codicil, and this Court is, perhaps, bound to follow it. The question how far this and other Courts of Probate are to be governed by the decision of the Court of Probate where the deceased was domiciled has never been expressly determined; but I certainly should not feel inclined to depart from what has been the general practice unless a strong case of inconvenience were brought under my consideration.' In *Read, In goods of* (*h*), the same learned judge said, 'It is not fully decided whether this Court is bound in all cases and under all circumstances to follow the grant of probate made by a Court of competent jurisdiction. . . . . It may often happen that but a very small part of the property is in India, where yet the party may be domiciled, and then, according to the present practice, the probate in India would still regulate the grant here. In such cases, therefore, the party, in order to obtain that to which he is justly entitled, and which he would naturally obtain if this Court might follow its own rules, would be compelled to go to a large expense in appealing to the Privy Council

Earl, In goods of. Judgment of Lord Penzance.

(*g*) (1828), 1 Hagg. 383.

(*h*) (1828), 1 Hagg. 476.

Earl, In goods of. Judgment of Lord Penzance.

from the irregular decision of a Court that has only original jurisdiction over a small part of the effects, but which by a sort of courtesy eventually regulates the whole.' In the case of *Countess Da Cunha, In goods of* (*i*), the Prerogative Court in granting administration followed the practice of the Court of the country of domicil, although it was contrary to its own; but in *H.R.H. the Duchess D'Orleans, In goods of* (*k*), this Court refused to do so. In *Viesca* v. *D'Aramburu* (*l*), Sir Herbert Jenner, after referring to the decision of a Court of the country of the deceased's domicil to the effect that, pending a suit as to the will of the deceased, the property should be secured in the hands of a judicial administrator, continued, 'I do not know that this order is absolutely binding on this Court; but, if it be discretionary, the Court would be inclined to follow the decision of the tribunal to which all the parties are subject, and which ought to have that which is incidental to the cause, namely, the care and security of the property.' The same principles were acted upon in *Isabella Stewart, In goods of* (*m*), and *David Rogerson, In goods of* (*n*). The result of the cases is that in the Prerogative Court the tendency was to follow the foreign grant where it could be done, but there was a reluctance to lay down any absolute rule in the matter, whilst the decisions of the Court of Probate (as in *H.R.H. the Duchess of Orleans, In goods of* (*o*)) have militated against the rule of following the foreign grants. This question was considered in *Enohin* v. *Wylie* (*p*), in which Lord Westbury (Lord Chancellor) said: 'Now, the utmost confusion must arise if, when a testator dies domiciled in one country, the Courts of every other country in which he has personal property should assume the right, first, of declaring who is the personal representative, and, next, of

Enohin v. *Wylie.* Judgment of Lord Westbury.

(*i*) (1828), 1 Hagg. 237.
(*k*) (1859), 1 S. & T. 253; 28 L. J. P. 129.
(*l*) (1842), 2 Curt. 277.
(*m*) (1835), 1 Curt. 904.
(*n*) (1840), 2 Curt. 656.
(*o*) *Supra*, note (*k*).
(*p*) *Supra*, note (*d*).

interpreting the will, and distributing the personal estate situate within its jurisdiction according to that interpretation. An Englishman dying domiciled in London may have personal property in France, Spain, New York, Belgium and Russia, and if the course pursued by the Court of Probate and the Court of Chancery in the present case were followed by the Courts of those several countries, there might be as many different personal representatives of the deceased, and as many varying interpretations of his will, as there are countries in which he is possessed of personal property.' I think there is strong good sense in these remarks, and the practical principle there pointed out is one that ought to be adhered to. The only question is, In what way ought the Court to act upon it? There was no power in the old Ecclesiastical Courts to make a grant, except in the direction indicated by the practice of those Courts. This Court, however, is armed with a special power by the 73rd section of 20 & 21 Vict. c. 77.

Earl, In goods of. Judgment of Lord Penzance.

"I think the Court ought to act upon that section, and to make a grant in all such cases as the present to the person who has been clothed by the Court of the country of domicil with the power and duty of administering the estate, no matter who he is, or on what ground he has been clothed with that power. The grant under the 73rd section will describe him as a person having that power, and thus the difficulty will be avoided of declaring that a person is executor who, according to the practice of the Court, is not executor, and of continuing a chain of executorship by persons who are executors according to the law of a foreign country, but not according to the law of this country. It is one thing to make a grant of administration, and another to make a grant of probate to a person as executor, which involves many peculiar consequences. I shall make a grant of administration with the will annexed to the applicant, under the 73rd section, as the person entitled under the grant of the Court of the

Present practice is to follow the foreign grant.

country of the deceased's domicil to administer the estate."

The practice, therefore, of the Court now is to follow the grant of the Court of the testator's domicil, not merely as to the document which that Court has admitted to probate, but also as to the person to whom the grant is made, as the person declared to be entitled by a Court of competent jurisdiction (*q*).

24 & 25 Vict. c. 114.

Previous to the year 1861, many nice questions arose as to how far wills were valid where a change of domicil, subsequent to the making of the will, had occurred. These questions, however, now, *as far as British subjects are concerned*, are put an end to by the 24 & 25 Vict. c. 114, known as Lord Kingsdown's Act.

Sect. 1. Wills of British subjects made out of the United Kingdom.

By the first section of that Act "every will and other testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicil of such person at the time of making the same, or at the time of his or her death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of her Majesty's dominions where he had his domicil of origin."

Sect. 2. *Ibid.* made within the United Kingdom.

Sect. 2. "Every will and other testamentary instrument made within the United Kingdom by any British subject (whatever may be the domicil of such person at the time

(*q*) See also the following cases:—*Lanewille* v. *Anderson* (1861), 2 S. & T. 24; 30 L. J. P. 25; 3 L. T. 304; *Lynch* v. *Government of Paraguay* (1871), L. R. 2 P. & D. 268; 40 L. J. P. 81; 25 L. T. 164; *Hallyburton, In goods of* (1866), L. R. 1 P. & D. 90; 35 L. J. P. 122; 14 L. T. 136; *Cosnahan, In goods of* (1866), L. R. 1 P. & D. 183; 35 L. J. P. 76; 14 L. T. 337. See also the more recent cases cited *post*, pp. 153—155.

of making the same or at the time of his or her death) shall, as regards personal estate, be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made." 24 & 25 Vict. c. 114.

Sect. 3. "No will or other testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicil of the person making the same." Sect. 3. Subsequent change of domicil.

Sect. 4. "Nothing in this Act contained shall invalidate any will or other testamentary instrument as regards personal estate which would have been valid if this Act had not been passed, except as such will or other testamentary instrument may be revoked or altered by any subsequent will or testamentary instrument made valid by this Act" (*r*). Sect. 4. Saving clause.

By sect. 5 this statute does not extend to any will made before the date of the passing of the Act, that is to say, August 6th, 1861 (*s*). Does not affect wills made before Aug. 6, 1861.

Though a man may have two domicils for some purposes, he can only have one for the purpose of succession (*t*); therefore, the Court can have regard to the law of *one* country only at a time in determining what papers are testamentary under the provisions of the statute, Law of one country only regarded.

(*r*) See Wms. on Exors. 10th ed. pp. 281—283.

(*s*) See *Deshais, In goods of* (1865), 4 S. & T. 13; 34 L. J. P. 58; 13 L. T. 246. See also *Raffenel, In goods of* (1862), 3 S. & T. 49; 32 L. J. P. 203; 8 L. T. 211; *Rule, In goods of* (1879), 4 P. D. 76; 47 L. J. P. 32; 39 L. T. 123; *Gally, In goods of* (1876), 1 P. D. 438; 45 L. J. P. 107; *Lacroix, In goods of* (1877), 2 P. D. 94; 46 L. J. P. 40; *Reid, In goods of* (1866), L. R. 1 P. & D. 74; 35 L. J. P. 43; 13 L. T. 680.

(*t*) *Crookenden* v. *Fuller* (1860), 1 S. & T. 441; 29 L. J. P. 1; 1 L. T. 70.

24 & 25 Vict. c. 114.

and will not mix up the legal principles of different countries (*u*).

Will of alien whose domicil of origin was English made abroad.

A will made according to the forms of English law by an alien who, though her domicil of origin was English, was domiciled abroad at the time of making her will and of her death, is not entitled to probate in this country (*x*). But this statute does not affect the provisions of sects. 8 and 10 of the Wills Act, that no appointment made in exercise of a power shall be valid unless executed in the manner therein provided (*y*).

Grants under 20 & 21 Vict. c. 79, and 21 & 22 Vict. c. 56.

Formerly much difficulty was experienced in getting representatives of a deceased person domiciled in England, Scotland or Ireland appointed, when he died possessed of property in either or both of the other two countries where he was not domiciled, besides his property in the country where he was domiciled, as the three countries were foreign to one another. This has now been much facilitated by the operation of the 20 & 21 Vict. c. 79 (relating to Ireland), and the 21 & 22 Vict. c. 56 (relating to Scotland).

"By the 94th section of the 20 & 21 Vict. c. 79, it is provided that: 'From and after the period at which this Act shall come into operation, when any probate or letters of administration to be granted by the Court of Probate in England shall be produced to, and a copy thereof deposited with the registrars of the Court of Probate in Ireland, such probate or letters of administration shall be sealed with the seal of the said last-mentioned Court, and, being duly stamped, shall be of the like force and effect, and have the same operation in Ireland as if it had been originally granted by the Court of Probate in Ireland.'

(*u*) *Pechell* v. *Hilderley* (1869), L. R. 1 P. & D. 673; 38 L. J. P. 66; 20 L. T. 1014.

(*x*) *Von Buseck, In goods of* (1881), 6 P. D. 211; 51 L. J. P. 9; *Bloxam* v. *Favre* (1883), 8 P. D. 101; 9 P. D. 130. See also *Keller, In goods of* (1892), 61 L. J. P. 39; 65 L. T. 763.

(*y*) *Kirwan's Trusts, Re* (1883), 25 Ch. D. 373; 52 L. J. Ch. 952; 49 L. T. 292.

"And by the following section of the same Act it is provided that: 'From and after the period at which this Act shall come into operation, when any probate or letters of administration to be granted by the Court of Probate in Ireland shall be produced to, and a copy thereof deposited with the registrars of the Court of Probate in England, such probate or letters of administration shall be sealed with the seal of the last-mentioned Court, and, being duly stamped, shall be of the like force and effect, and have the same operation in England as if it had been originally granted by the Court of Probate in England.' Grants under 20 & 21 Vict. c. 79, and 21 & 22 Vict. c. 56.

"By the 29th section of the Court of Probate Act, 1858, it is enacted that 'letters of administration granted by the Court of Probate in Ireland shall not be re-sealed under sect. 95 of the 20 & 21 Vict. c. 79, until a certificate has been filed under the hand of a registrar of the Court of Probate in Ireland, that bond has been given to the judge of the Court of Probate in Ireland in a sum sufficient in amount to cover the property in England as well as in Ireland in respect of which such administration is required to be re-sealed.'

"By the 9th section of the 21 & 22 Vict. c. 56 (the Confirmation and Probate Act, 1858), it is provided that 'from and after the date aforesaid (*i.e.*, the 12th day of November, 1858), it shall be competent to include, in the inventory of the personal estate and effects of any person who shall have died domiciled in Scotland, any personal estate or effects of the deceased situated in England or in Ireland, or both: provided that the person applying for confirmation shall satisfy the commissary, and that the commissary shall, by his interlocutor, find that the deceased died domiciled in Scotland, which interlocutor shall be conclusive evidence of the fact of domicile: provided also, that the value of such personal estate and effects situated in England or Ireland respectively, shall be separately stated in such inventory, and such inventory shall be impressed with a stamp corresponding to the entire value

Grants under 20 & 21 Vict. c. 79, and 21 & 22 Vict. c. 56.

of the estate and effects included therein, wheresoever situated in the United Kingdom.'

"By the 12th section of the same Act, it is provided that 'from and after the date aforesaid, when any confirmation of the executor of a person who shall in manner aforesaid be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in England, shall be produced in the principal Court of Probate in England, and a copy thereof deposited with the registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said Court, and returned to the person producing the same, and shall thereafter have the like force and effect in England as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate.'

"By the 14th section of the same Act, it is provided that 'from and after the date aforesaid, when any probate or letters of administration to be granted by the Court of Probate in England to the executor or administrator of a person who shall be therein, or by any note or memorandum thereon signed by the proper officer, stated to have died domiciled in England, or by the Court of Probate in Ireland to the executor or administrator of a person who shall in like manner be stated to have died domiciled in Ireland, shall be produced in the Commissary Court of the county of Edinburgh, and a copy thereof deposited with the commissary clerk of the said Court, the commissary clerk shall endorse or write on the back or face of such grant a certificate in the form, as near as may be, of the schedule (F) hereunto annexed, and such probate or letters of administration, being duly stamped, shall be of the like force and effect, and have the same operation in Scotland, as if a confirmation had been granted by the said Court'"; and see *post*, Part II., "Practice."

The following are some of the more recent cases bearing on the subject of this chapter :—

Wills of British subjects under Lord Kingsdown's Act, recent cases as to.

The will of a British subject domiciled abroad at the time of his death had been proved in the French Court and deposited with a notary, who, by the law of France, was forbidden to allow it to be removed from his custody. Probate granted of a copy until the original should be brought in (*z*). 1892.

The Court refused to allow a will dealing exclusively with real property abroad and another document of a like nature, to be included in the probate, with the will of the testator, an Englishman, who died domiciled in this country (*a*). 1894.

The grant, where the testator has died domiciled abroad, will not necessarily be of probate. If the person to whom the foreign Court has made the grant is a person not entitled to the grant as executor according to the law of England, the grant will be of administration with the will annexed (*b*). 1894.

A testatrix who at the time of her death had a French domicil, executed in pursuance of a power of appointment a will in the English form, invalid according to French law. The Court on the authority of *Alexander, In goods of* ((1860), 29 L. J. P. 93; 2 L. T. 56), which it held to be binding though erroneous, following in this respect the decision in *Hallyburton, In goods of* ((1866), L. R. 1 P. & D. 1896.

(*z*) *Lemmé, In goods of*, (1892) P. 89; 61 L. J. P. 123; 66 L. T. 562; Wms. on Exors. 10th ed. p. 272, note (*s*); *Von Linden, In goods of*, (1896) P. 87; 65 L. J. P. 148. See also *Bridges, In goods of* (1892), 65 L. T. 764; *Lockhart, In goods of* (1893), 69 L. T. 21.

(*a*) *Tamplin, In goods of*, (1894) P. 39; 63 L. J. P. 75; Wms. on Exors. 10th ed. p. 272, note (*n*). See also *Brown-Séquard, In goods of* (1894), 70 L. T. 811; *Murray, In goods of*, (1896) P. 65.

(*b*) *Briesemann, In goods of*, (1894) P. 260; 63 L. J. P. 159; 72 L. T. 268; Wms. on Exors. 10th ed. p. 278, note (*z*). See also *Blank, In goods of* (1894), 70 L. T. 810.

Wills of British subjects under Lord Kingsdown's Act, recent cases as to.

90; 35 L. J. P. 122; 14 L. T. 136), granted administration with the will annexed (*c*).

1901. Even where the husband consents, the Court will refuse to grant probate to the executor named in the will of a married woman, who dies domiciled abroad; but with such consent, will make a general grant of administration with the will annexed to the person named in the will as executor (*d*).

1903. In deciding who should take the grant where a testator domiciled abroad has left English and foreign wills, the Court will make the grant to the person appointed by the law of the foreign domicil, unless incompetent by English law. In so doing the Court will pass over an English executor who is not recognized by the foreign Court (*e*).

1904. Sect. 3 of Lord Kingsdown's Act extends to the will of a foreign testatrix made before her marriage, and in strict conformity with the law of her foreign domicil at that time according to which marriage does not revoke a will (*f*).

1904. On being satisfied that a colonial grant has been properly made, the Court has jurisdiction under the Colonial Probates Act, 1892, to direct resealing (*g*).

(*c*) *Huber, In goods of,* (1896) P. 209; 65 L. J. P. 119; 75 L. T. 543; Wms. on Exors. 10th ed. p. 283, note (*x*). See also *Tréfond, In goods of,* (1899) P. 247; 68 L. J. P. 82; 81 L. T. 56. The following cases were decided in 1898 and 1899:—*Stokes* v. *Stokes* (1898), 67 L. J. P. 55; 78 L. T. 50; *Abdul Hamid Bey, In goods of* (1898), 67 L. J. P. 59; 78 L. T. 202; *Gubboy, In goods of* (1899), 80 L. T. 808. See also *Sanders, In goods of,* (1900) P. 292; 69 L. J. P. 121.

(*d*) *Vannini, In goods of,* (1902) P. 330; 71 L. J. P. 7; 85 L. T. 639; Wms. on Exors. 10th ed. p. 377, note (*p*).

(*e*) *Meatyard, In goods of,* (1903) P. 125; 72 L. J. P. 25; 89 L. T. 70; Wms. on Exors. 10th ed. p. 279, note (*e*).

(*f*) *Groos, In estate of,* (1904) P. 269; 73 L. J. P. 82; 91 L. T. 322.

(*g*) *Smith, In estate of,* (1904) P. 114; 73 L. J. P. 28; 90 L. T. 169. See also the following cases decided in the same year:—*Von Faber* (*Baroness*), *In goods of* (1904), 20 Times L. R. 640; *Schenley, In goods of* (1904), *ibid.* 127.

As to sealing and resealing grants, see *post*, Part II. "Practice." Resealing grants.

Where a testator died leaving a large estate in Scotland, and a small estate in England, and probate having been taken out in Scotland, a legatee applied to the Court for a grant of administration of the estate in this country: Held, that the Court is not bound to make such a grant, but that its power is discretionary: Held, also, that it not having been shown that the executors were not doing their duty, there was no necessity for the grant in this country (*h*).

(*h*) *Ewing, In goods of* (1881), 6 P. D. 19; 50 L. J. P. 11; 44 L. T. 278.

CHAPTER XVI.

OF SIMPLE ADMINISTRATION—TO WHOM GENERAL LETTERS OF ADMINISTRATION SHOULD BE GRANTED (*a*).

When granted.

The grant of administration pure and simple is made where the deceased has died wholly intestate as to his personal estate (*b*).

Powers and duties of a personal representative.

It is scarcely within the scope of the present treatise to define what are the powers and duties of a personal representative. An administrator derives his authority from the Court, while an executor derives his from the will; therefore, the latter is in possession of the property, in point of law, from the death of the testator, and before probate is granted; whereas the powers of the former commence only upon the grant of letters of administration (*c*).

Who are incapable of acting as administrators.

"The incapacities of an administrator not only comprise those persons who have already been mentioned as disqualified for the office of executor (*d*), but extend to outlawry, and bankruptcy, or other lawful disability. But it is no incapacity to be an administrator that the next of kin is an alien" (*e*). And it may be added that as an administrator is required to give a bond, as security for the due performance of his office, it follows that all persons who are unable to execute such a bond are in fact disqualified.

(*a*) See Wms. on Exors. 10th ed. pp. 312—363.
(*b*) *Ante*, p. 86.
(*c*) See Wms. on Exors. 10th ed. pp. 314—318.
(*d*) *Ante*, pp. 87, 88.
(*e*) Wms. on Exors. 10th ed. pp. 359—361.

A minor, owing to his inability to enter into a bond, cannot be an administrator; and if the next of kin be a minor, administration must be granted to some other person during his minority. Infants and minors.

This species of grant is called administration *durante minore ætate*, and is limited to such time as the minor shall be under the full age of twenty-one years. Administration *durante minore ætate.*

On one occasion the Prerogative Court made a grant of administration to a minor married in Portugal to a Portuguese husband, on the ground that by the law of her domicil her disabilities as a minor had ceased (*f*). Grant to minors personally.

"However, in a subsequent case, Sir C. Cresswell refused to grant administration to a minor, though by the law of the country where the deceased was domiciled the minor was entitled to the grant; and that learned judge appeared to be of opinion that the Court ought not to follow the practice of the Court of Domicil, where it is in contradiction to English law, according to which the minor could not take upon himself the liabilities which the law casts upon an administrator—for instance, he could not execute a bond" (*g*).

"Coverture was no incapacity, even before the Married Women's Property Act, 1882, for the office of administratrix. Therefore, if a *feme covert* be next of kin to the intestate, administration shall be granted to her. But she could not, before the Married Women's Property Act, take administration without the consent of her husband, inasmuch, among other reasons, as he was required to enter into the administration bond, which she was incapable of doing. Yet, if it could be shown that the husband was abroad or otherwise incompetent, a stranger might join in the security in his stead. In either case the administration was committed to her alone, and not to her jointly To *feme covert*, before Married Women's Property Act, 1882. Husband had to join in bond. Husband abroad,

(*f*) *Da Cunha* (*Countess*), *In goods of* (1828), 1 Hagg. 237.

(*g*) Wms. on Exors. 10th ed. p. 360; citing *Orleans* (*Duchess*), *In goods of* (1859), 1 S. & T. 253.

or incompetent.

with her husband: otherwise, if he should survive her, he would be administrator contrary to the meaning of the Act.

Since the Married Women's Property Act, 1882.

"Since the commencement of the Married Women's Property, Act, 1882, a married woman may take administration without the consent of her husband, and in all respects act in the matter concerning the intestate's estate as if she were a *feme sole*" (*i*).

Protection order. 20 & 21 Vict. c. 85, s. 21.

Even before, a married woman who had obtained a protection order under sect. 21 of the Matrimonial Causes Act, 1857, or who had obtained a decree for a judicial separation, and, *à fortiori*, one who had been divorced, was, with respect to her capacity to act as an administratrix, in the same position as a *feme sole*.

Land Transfer Act, 1897.

"Since the Land Transfer Act, 1897, if a wife dies leaving real as well as personal estate, the heir-at-law of the wife must renounce or be cited, as he has under that Act an equal right to the administration with the next of kin. In special circumstances the grant will be made under sect. 73 of the Probate Act, 1857, excluding the husband; but in ordinary cases it would seem that the husband would be entitled in priority to the wife's heir-at-law" (*k*).

1898. Married woman leaving real estate by will,

In the case of *Roberts, In goods of* (*l*), a married woman left a will by which she left her real estate to her husband for life, with remainder to her natural daughter, who predeceased her, and appointed her husband sole executor. Her husband survived her, but died intestate without

(*i*) Wms. on Exors. 10th ed. p. 360. See also *Sutherland, In goods of* (1862), 4 S. & T. 189; 31 L. J. P. 126. But a married woman could not by renouncing deprive her husband of a right to the grant: *Haynes* v. *Matthews* (1860), 1 S. & T. 46.

(*k*) Wms. on Exors. 10th ed. p. 322, citing Land Transfer Act, 1897, s. 2, sub-s. 4; Probate Rule, November 20, 1897 (as to which, see *post*, Part II., "Practice"); and *Ardern, In goods of*, (1898) P. 147; 67 L. J. P. 70; 78 L. T. 536; *Roberts, In goods of*, (1898) P. 149; 67 L. J. P. 71; 78 L. T. 390.

(*l*) *Supra*.

having proved her will, and administration of his estate was granted to his next of kin: Held, on an application by the administratrix of the husband for a grant of administration of the estate of the wife, that having regard to the provisions of the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Part 1, s. 2, sub-s. 4, the heir-at-law not having been cited, a general grant of administration ought not be made, but that the applicant might take a grant *ad colligendum*, which would enable her to manage the land until the heir-at-law could be cited. executor dying before taking probate.

The effect of the Land Transfer Act, 1897 (60 & 61 Vict. c. 65) (*m*), has been to vest the real as well as the personal estate in the personal representative of every deceased person who has died since January 1st, 1898. Land Transfer Act, 1897.

The term "personal representative" is defined by the Act, sect. 24, sub-sect. 2, to mean an "executor or administrator."

By sect. 1, sub-sect. 3, of the Act, probate and letters of administration may be granted in respect of real estate only, although there is no personal estate. The expression "real estate," however, in this part of the Act does not include copyhold or customary freehold where admission is necessary.

Where the title of the person applying under the Act for administration as heir-at-law is clear, and there is no personalty, a grant may be made to the applicant without notice to the next of kin; but where the title of the applicant is doubtful, or the personalty large as compared with the realty, notice should be given to the next of kin (*n*). Heir-at-law.

"It must be borne in mind that as regards intestates who die after the coming into operation of the Land Transfer Act, 1897" (that is, on or since January 1st, To whom administration may be granted.

(*m*) See *post*, Appendix.

(*n*) *Barnett, In goods of*, (1898) P. 145; 67 L. J. P. 85; 78 L. T. 391.

To whom administration may be granted.

1898), "the heir-at-law, where there is real estate, is put on an equal footing with the next of kin as regards the right to a grant of administration" (*p*).

It must be remembered that in all cases the next of kin means the next of kin *at the time of the death of the deceased*, not at the time of making the application for the grant.

Order of preference.

Subject to the above observations as to the right of the heir-at-law to a grant of administration equally with the next of kin, the following is the order in which next of kin stand in respect of their right to obtain administration (*q*) :—

1. Husband or wife (although not next of kin).
2. Child or children.
3. Grandchild or grandchildren.
4. Great-grandchildren, &c. until the direct lineal descendants of the intestate to the remotest degree are exhausted.
5. Father.
6. Mother.
7. Brothers and sisters.
8. Grandfathers and grandmothers.
9. Uncles, aunts, nephews and nieces, great-grandfathers, or great-grandmothers.
10. Great-nephews, great-nieces, cousins german, great-uncles and aunts, great-grandfathers' fathers, and so on, until the collateral relations of the intestate to the remotest degree are exhausted. All being equally entitled who stand in the same degree (*r*).

Husband.

In whatever way the husband first became entitled to the grant of administration of the goods of the wife, his

(*p*) Wms. on Exors. 10th ed. p. 334.

(*q*) Persons related to the deceased in the first degree are commonly spoken of as "*next of kin*." Those less nearly related are commonly spoken of as "*persons entitled in distribution*."

(*r*) See Wms. on Exors. 10th ed. pp. 328—334.

right to such a grant was clearly recognized long before the passing of the 29 Car. 2, c. 3, s. 25, by which statute it received a legislative sanction (*s*). Husband and wife.

As to husband and wife, even where the marriage was voidable, the survivor, where the marriage remained unquestioned during the lifetime of both parties, was entitled to administration, but it was otherwise where the marriage was void *ab initio* (*t*).

"The Married Women's Property Act, 1882, has not altered the devolution of the undisposed separate personalty of a married woman. Accordingly, on the death of a married woman without disposing of her separate personalty, the quality of separate property ceases, and the right of the husband to such undisposed of personalty accrues as if the separate use had never existed" (*u*). Position unaltered by Married Women's Property Act.

The husband has no right to the administration if the marriage has been dissolved on the ground of his adultery and desertion (*x*); and where a wife has been judicially separated or has obtained a protection order under 20 & 21 Vict. c. 85, s. 21, and afterwards dies in the lifetime of her husband, intestate, the Court will decree administration, limited to such property as she acquired since the judicial separation or protection order, to the next of kin of the wife; as to the remainder, administration will be granted to the husband (*y*); but it is necessary, generally speaking, that the husband should be cited (*z*). Wife who has obtained a divorce. *Ibid.*, who has obtained judicial separation or protection order.

(*s*) See Wms. on Exors. 10th ed. p. 320.

(*t*) *Ibid.* p. 321.

(*u*) *Ibid.* p. 320.

(*x*) *Hay, In goods of* (1866), L. R. 1 P. & D. 51; 35 L. J. P. 3; 13 L. T. 335. See also *Wallas, In goods of*, (1905) P. 326, where it was laid down that a divorced spouse, whether petitioner or respondent, ceases to have an interest in the estate of the other party to the dissolved marriage, who subsequently dies intestate.

(*y*) *Worman, In goods of* (1860), 1 S. & T. 513; 29 L. J. P. 164; *Faraday, In goods of* (1862), 2 S. & T. 369; 31 L. J. P. 7; *Weir, In goods of* (1862), 2 S. & T. 451; 31 L. J. P. 88; *Stephenson, In goods of* (1867), L. R. 1 P. & D. 289; 36 L. J. P. 20; 15 L. T. 296.

(*z*) *Brighton, In goods of* (1865), 34 L. J. P. 55. See also *Megson*,

Ibid., separation order before justices.

A woman who has obtained a separation order under the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 5, sub-s. (a), is in the same position as a woman who has obtained a judicial separation on the ground of cruelty (*a*).

Husband covenanting not to claim property in case of wife's intestacy.

Where a husband covenanted in a deed of separation that if his wife died intestate, her next of kin should be entitled to her property, the Court, notwithstanding that the husband objected, granted administration to her father (*b*).

Husband convicted of bigamy.

Where a husband was convicted of bigamy in respect of his marriage with the intestate, it was held by the Ecclesiastical Court that he might establish his right to administer her effects, on proof that he was not guilty and had been wrongly convicted (*c*).

Husband's representative.

Where the wife has died intestate, if the husband dies without taking out administration to his deceased wife, the Court will grant administration to his representative, and not to the next of kin of the wife; unless the husband's whole interest determines with his life (*d*).

Husband dying without administering.

But the husband's next of kin must constitute themselves his legal personal representatives before they can claim to administer her estate (*e*).

Grant to

In one reported case the Prerogative Court made a grant

In goods of (1899), 80 L. T. 295. See also Wms. on Exors. 10th ed. p. 321.

(*a*) See Lushington's Summary Jurisdiction (Married Women) Act, 1895, 2nd ed. pp. 56, 60. See also *Elizabeth Jones, In goods of* (1905), 74 L. J. P. 27.

(*b*) *Allen* v. *Humphrys* (1883), 8 P. D. 16; 52 L. J. P. 24; 48 L. T. 125; *Moore, In goods of*, (1891) P. 299; 6 L. J. P. 98.

(*c*) *Wilkinson* v. *Gordon* (1825), 2 Add. 152.

(*d*) See Wms. on Exors. 10th ed. pp. 322, 323. See also *Partington* v. *Att.-Gen.* (1869), L. R. 4 H. L. 100; *Pountney, In goods of* (1832), 4 Hagg. 28. See also *Bell, In goods of* (1860), 1 S. & T. 288; 29 L. J. P. 162; *Sowerby, In goods of* (1838), 2 Curt. 852; *Fielder* v. *Hanger* (1831), 3 Hagg. 769.

(*e*) *Crause, In goods of* (1859), 1 S. & T. 146; *Att.-Gen.* v. *Partington* (1867), 3 H. & C. 193; L. R. 4 H. L. 100; 36 L. J. Ex. 205; 21 L. T. 370; *Harding, In goods of* (1872), L. R. 2 P. & D. 394; 41 L. J. P. 65; 26 L. T. 668.

of administration of the effects of a married woman to one of her ante-nuptial creditors (*f*).

ante-nuptial creditor of wife.

Since the Married Women's Property Act, 1882, when a married woman is administratrix, it is no longer necessary that her husband should join in the administration bond (*g*).

Since Married Women's Property Act, 1882, husband need not join in administration bond.

As to the right of the widow of an intestate, the statute 21 Hen. 8, c. 5, s. 3, directs that the Ordinary shall grant administration to the widow, *or* to the next of kin, *or* to both, at his discretion. Her right is founded on this statute, but there is this difference between her position and that of the widower, viz., that if she die before administration is granted to her, her right is not such a one as will necessarily pass to her representatives.

Widow. 21 Hen. 8, c. 5.

But the Court is not bound to give the grant to the widow, and therefore under the old law a mandamus did not lie to compel the Ecclesiastical Court to adopt this course, and thus deprive the Ordinary of his discretion (*h*).

Court not bound to make grant to widow.

Sir Cresswell Cresswell held that the Court was precluded by the statute from making a joint grant to a widow and one of the persons entitled in distribution (but not next of kin), even with the consent of the next of kin and of all the persons entitled in distribution, and that sect. 73 of the Probate Act, 1857, did not enable him to do so (*i*). Subsequently, however, such a grant was made under special circumstances, under the 73rd section (*k*).

Joint grant to widow and another with consent of next of kin.

The Court prefers a sole to a joint administration, and will not make one except under special circumstances, and where a joint grant is made to the widow and one of the

(*f*) *Huddleston* v. *Huddleston* (1852), 2 Robert. 424.

(*g*) *Ayres, In goods of* (1883), 8 P. D. 168; 52 L. J. P. 98.

(*h*) See Wms. on Exors. pp. 325, 326.

(*i*) *Browning, In goods of* (1862), 2 S. & T. 634; 31 L. J. P. 161; 7 L. T. 217.

(*k*) *Grundy, In goods of* (1868), L. R. 1 P. & D. 459; 37 L. J. P. 21; 17 L. T. 451.

Widow passed over.

next of kin, all the other next of kin must consent that the grant be so made (*l*).

But the Court will, on sufficient cause shown (as, *e.g.*, where the wife has been divorced, or has been living in adultery), pass over the widow in favour of the next of kin (*m*).

Where misconduct proved.

Where the widow of an intestate, whose estate was small, was shown to have been a woman of dissipated habits, who had eloped with another man sixteen years before the application, and had not since been heard of, the Court made a grant of administration to the only son of the intestate, without citing the widow (*n*).

The object of citation being to give a party, to be passed over in making a grant of administration, an opportunity of denying charges against him or her, is sufficiently satisfied by a previous finding in a suit for dissolution of marriage that the party to be passed over has been guilty of adultery, although no decree for dissolution be actually on foot at the time of application for the grant. Citation in such a case may be dispensed with (*o*).

Secus, where misconduct merely alleged.

But on an application for a grant to the father of an intestate, passing over his widow, against whom misconduct was charged, the Court refused to make the grant without citing the widow (*p*).

And the Court will not, at any rate without notice, pass over a widow, who has been legally separated from her

(*l*) *Newbold, In goods of* (1867), L. R. 1 P. & D. 285; 36 L. J. P. 14; 15 L. T. 248. See also *Dickinson, In goods of*, (1891) P. 292; 60 L. J. P. 94; 64 L. T. 808.

(*m*) *Anderson, In goods of* (1864), 3 S. & T. 489; 33 L. J. P. 149; 11 L. T. 21; *Nares, In goods of* (1888), 13 P. D. 35; 57 L. J. P. 19; 58 L. T. 529. See also Wms. on Exors. 10th ed. pp. 326, 327.

(*n*) *Stevens, In goods of*, (1898) P. 126; 67 L. J. P. 60; 78 L. T. 389.

(*o*) *Frost, In goods of*, (1905) P. 140; 74 L. J. P. 53; 92 L. T. 667.

(*p*) *Middleton, In goods of* (1889), 14 P. D. 23; 58 L. J. P. 28; 60 L. T. 237.

husband by reason of his cruelty, in granting administration to his estate (*q*). Widow passed over.

Where the widow of a deceased intestate was resident in Australia, the Court granted administration to the sister of the deceased, as attorney for the widow (*r*); and where the widow was a lunatic, and the brother of the deceased, his only other next of kin, was unable to give justifying security, the Court made the grant to a receiver appointed in an action in the Chancery Division (*s*). Widow resident in Australia. 1892. Grant to receiver in Chancery.

Where the will of a testator could not be found, and his widow who refused to attend and be examined stated that it had been accidentally destroyed, the Court, passing over the widow, made the grant, as in a case of intestacy, to his only son (*t*). Widow refusing to give evidence as to lost will.

By the Act 19 & 20 Vict. c. 94, all special *local* customs relating to intestates' estates are abolished. 19 & 20 Vict. c. 94.

By the Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), it is enacted as follows:— Intestates' Estates Act, 1890.

Sect. 1. "The real and personal estates of every man who shall die intestate after the first day of September, one thousand eight hundred and ninety, leaving a widow but no issue shall, in all cases where the net value of such real and personal estates shall not exceed five hundred pounds, belong to his widow absolutely and exclusively." Intestate's estate not exceeding 500*l.* to belong to widow where no issue.

Sect. 2. "Where the net value of the real and personal estates in the preceding section mentioned shall exceed the sum of five hundred pounds, the widow of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal estates for such five hundred pounds, with interest thereon from the date of Intestate's estate exceeding 500*l.*,

(*q*) *Ihler, In goods of* (1873), L. R. 3 P. & D. 50; 42 L. J. P. 18; 28 L. T. 479.

(*r*) *Rich, In goods of*, (1892) P. 143; 61 L. J. P. 94.

(*s*) *Moore, In goods of*, (1892) P. 145; 61 L. J. P. 119.

(*t*) *Wright, In goods of*, (1893) P. 21; 62 L. J. P. 31; 68 L. T. 25. See also *Cory, In goods of* (1901), 84 L. T. 270.

widow to have a charge for 500*l.*

the death of the intestate at four per cent. per annum until payment."

How charge to be borne as between realty and personalty.

Sect. 3. "As between the real and personal representatives of such intestate, such charge shall be borne and paid in proportion to the values of the real and personal estates respectively."

Above provision to be in addition to share of residue.

Sect. 4. "The provision for the widow, intended to be made by this Act, shall be in addition and without prejudice to her interest and share in the residue of the real and personal estates of such intestate remaining after payment of the sum of five hundred pounds, in the same way as if such residue had been the whole of such intestate's real and personal estates and this Act had not been passed."

How realty to be valued.

Sect. 5. "The net value of such real estates as aforesaid shall for the purposes of this Act, be estimated in the case of a fee simple upon the basis of twenty years' purchase of the annual value by the year at the date of the death of the intestate, as determined by law for the purposes of property tax, less the gross amount of any mortgage or other principal sum charged thereon, and less the value of any annuity or other periodical payment chargeable thereon, to be valued according to the tables and rules in the Schedule annexed to the Statute sixteenth and seventeenth Victoria, chapter fifty-one, and in the case of an estate for a life or lives according to the said tables and rules."

Succession Duties Act, 1853.

How personalty to be valued.

Sect. 6. "The net value of such personal estate as aforesaid shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said personal estate shall be subject."

Short title.

Sect. 7. "This Act may be cited as the Intestates' Estates Act, 1890."

Extent of Act.

Sect. 8. "This Act shall not extend to Scotland."

Party having prior right to

"It may be expedient to advert to an established rule of the Ecclesiastical Court, viz.:—That wherever a party

has a prior right to administer, the Court requires that he should be cited or consent before it will grant administration to any other person, and the rule will not be relaxed notwithstanding the party who has the right has no interest in the property in respect of which the grant of administration is sought. But in cases where the Court has a discretion, viz., in cases where the party entitled in priority is so entitled by the practice of the Court and not by statute, the Court will sometimes dispense with the citation or consent of the party having the prior claim" (*u*). grant must generally be cited.

After the widow the children of the intestate are next entitled to a grant of administration of his effects; for, though the children and the parents of the intestate both stand in the first degree from him, yet by our law children are allowed the preference, and so are their descendants, to the remotest degree (*x*). Children.

In the contest for administration all children stand in equal degree, and *primogeniture* gives no especial right, though, *cæteris paribus*, males are preferred to females (*y*), unless the latter be the first applicant (or, as it is termed, *prior petens*), in which case they will be entitled to the grant in preference to males (*z*). Males preferred to females, unless the latter be *priores petentes*.

"Primogeniture gives no right to preference, so as to weigh against the majority of interests, but if things are precisely equal, if the scale is exactly poised, being the elder brother would incline the balance" (*a*). *Primogeniture.*

(*u*) Wms. on Exors. 10th ed. pp. 358, 359, citing *Barker, In goods of* (1837), 1 Curt. 592; *Currey, In goods of* (1849), 5 Notes of Cas. 54. When the next of kin is of unsound mind, the practice is that his next of kin must also be cited, in order that they may take administration for his use and benefit, if they think proper: *Windeatt* v. *Sharland* (1872), L. R. 2 P. & D. 217; 41 L. J. P. 9; 25 L. T. 574.

(*x*) Wms. on Exors. 10th ed. p. 333.

(*y*) *Ibid.* pp. 335, 336, citing *Chittenden* v. *Knight* (1757), 2 Cas. temp. Lee, 559.

(*z*) *Cordeux* v. *Trasler* (1865), 4 S. & T. 48; 34 L. J. P. 127.

(*a*) Wms. on Exors. 10th ed. pp. 335, 336.

Males preferred to females.

The rule that males are to be preferred to females is not so stringent as the rule that the grant will follow the majority of interests (*b*).

Cordeux v. *Trasler*. Per Lord Penzance.

In giving judgment in *Cordeux* v. *Trasler* (*c*), Lord Penzance makes the following observations as to the rules which guide the Court as to making a grant of administration where the parties claiming it are in equal degree:—In *Iredale* v. *Ford* (*d*), Sir C. Cresswell said, "There are several dicta in the books on the subject of the rules which guide the discretion of the Court in granting administration where the statute does not apply; . . . *cæteris paribus* males are preferred to females, but there is another principle relied on . . . that the grant will follow the majority of interests, and will be made as desired by the majority of interests. I think this is a more stringent rule than the one giving a preference to males over females. There is also another rule which sometimes guides the Court, . . . namely, that the grant will be made *priori petenti*. It is difficult to weigh with great exactitude the merits of the respective applicants for a grant, nor is it necessary to do so, because, provided the Court is satisfied that the person it selects is responsible, and is able and willing to give security, the object of the grant is achieved."

Priores petentes.

Grant not made to more than three persons.

The grant is made of the whole administration, and no power is reserved for other administrators to come in and join as in the case of executors (*e*). Another rule is, that when several apply, the Court will not grant letters of administration to more than three persons, except in the case of testamentary guardians. Indeed, the Court never makes a joint grant if it can possibly avoid it, and "*à fortiori*, the Court never forces a joint administration upon

(*b*) *Iredale* v. *Ford* (1859), 1 S. & T. 305; 5 Jur. N. S. 474.

(*c*) *Supra*, note (*z*).

(*d*) *Supra*.

(*e*) *Nayler, In goods of* (1853), 2 Robert. 409; Wms. on Exors. 10th ed. p. 323, note (*y*).

unwilling parties" (*f*). Joint administrations are, however, sometimes granted (*g*). Sole preferred to joint grant.

"When administration has once been committed to any of the next of kin, others even in the same degree of kindred, have, during the life of the administrator, no title to a similar grant; unlike the case of an executor, who has a right to probate, though it has been already taken out by his co-executor." But a next of kin who has even renounced may, upon the death of the party appointed administrator, come in and take administration *de bonis non* (*h*). When administrator once appointed, no right to other next of kin to take administration during his life.

Where administration is contested by two persons of the whole blood in equal degree of relationship, the rule is to grant it to the one who unites the majority of interests; but where the contest is between one of the whole blood and one of the half-blood, the one of the whole blood is to be preferred (*i*). Half-blood.

A child legitimate by the law of its father's domicil but illegitimate according to English law, is entitled to a share as one of the next of kin of an intestate dying domiciled in England under the Statute of Distributions (*k*). Children legitimized by law of parents' domicil.

Administration was granted to a nephew, on the renunciation of his father, the brother and sole next of kin of the deceased (*l*). To others than next of kin.

(*f*) Wms. on Exors. 10th ed. pp. 336, 337.

(*g*) *Grundy, In goods of* (1868), L. R. 1 P. & D. 459; 37 L. J. P. 21; 17 L. T. 451; *Thacker, In goods of*, (1900) P. 15; 69 L. J. P. 1; 81 L. T. 790.

(*h*) See Wms. on Exors. 10th ed. p. 337. And see *post*, Chap. XVII.

(*i*) Wms. on Exors. p. 335, citing *Mercer* v. *Morland* (1756), 2 Cas. temp. Lee, 499; *Stratton* v. *Linton* (1862), 31 L. J. P. 48.

(*k*) *Goodman's Trusts, Re* (1881), 17 Ch. D. 266; 50 L. J. Ch. 425; 44 L. T. 527 (reversing the decision of Jessel, M. R., 14 C. D. 619).

(*l*) *Keane, In goods of* (1828), 1 Hagg. 692. See also *Blagrave, In goods of* (1829), 2 Hagg. 83; *Johnson, In goods of* (1863), 2 S. & T. 595; 7 L. T. 337. See also *Harper, In goods of*, (1899) P. 59; 68 L. J. P. 48; 80 L. T. 294. See also *Bowden, In goods of* (1905), 21 Times L. R. 13.

Rights of Crown.

Where there are no next of kin, the Crown is entitled to the grant, in accordance with both the feudal principle of escheat and the maxims of the civil law. As a bastard is *nullius filius*, he can have no next of kin, unless he leaves lawful issue. When, therefore, a bastard dies intestate and unmarried, his effects revert to the Crown; but where he makes a will which does not dispose of the residue, the legatees are entitled to administration with the will annexed, limited to the property disposed of by the will; the next of kin without the consent of the legatees being only entitled to a grant, save and except such property, or to a *cæterorum* grant (*m*).

Royal Warrant, July 25th, 1771.

The practice of the Crown is to divide the effects of an intestate bastard among the natural relatives, and to retain only a percentage as under:—

If property under £500 . . .	One-tenth.
„ „ 1,000 . . .	One-eighth.
„ „ 5,000 . . .	One-sixth.
„ „ 10,000 . . .	One-fourth.
If £10,000 or upwards . . .	One-third.

39 & 40 Vict. c. 18, s. 1, where Crown entitled to personal estate.

"By stat. 39 & 40 Vict. c. 18, the Treasury Solicitor Act, 1876 (which, by sect. 9 repeals the former statute, 15 & 16 Vict. c. 3), the Treasury Solicitor is constituted a corporation sole with certain powers and liabilities (sect. 1).

Sect. 2.

"Where the Crown becomes entitled to the personal estate of an intestate, and the Court has power to grant administration to a nominee of the Crown, and where the Crown nominates for that purpose the Treasury Solicitor, the Court may grant administration for the use of the Crown to the Treasury Solicitor (by his official name), and his successors, or to some person nominated by the Treasury Solicitor (sect. 2).

Sect. 2.

"The administration, when granted to the Treasury Solicitor, and the office of administrator under such grant,

(*m*) *Rhoades, In goods of* (1866), L. R. 1 P. & D. 119; 35 L. J. P. 125.

and all the estates, rights, duties, and liabilities of such administrator vest in and are imposed on the Treasury Solicitor for the time being without any further grant of administration (sect. 2). 39 & 40 Vict. c. 18, s. 2.

"The Treasury Solicitor may be nominated as administrator either in any particular case or class of cases, or in all cases, and such nomination may be limited as to her Majesty may seem fit, and the Treasury Solicitor may be authorized to nominate some other person to take out administration in any particular case or class of cases.

"The Treasury Solicitor, notwithstanding that he does not give the bond which, if such administration were granted to him as a private individual he would be required by law to give, is subject as regards the administration to the liabilities and duties imposed by such bond (sect. 2).

"Sect. 4 deals with the disposal of money and property received under an administration or forfeiture, and of unclaimed grants. Sect. 4.

"Sect. 5 provides for the making of rules by the Treasury. Sect. 5.

"Sect. 6 applies the Act to previous administrations, &c. Sect. 6.

"Sect. 9 (1) provides for the re-enactment of sect. 2 of stat. 15 & 16 Vict. c. 3 (repealed as above stated), viz., that 'where the administration of the personal estate of any deceased person has been granted to the solicitor for the affairs of her Majesty's Duchy of Lancaster for the use of her Majesty, that solicitor shall, notwithstanding that he does not give the bond which, if such administration had been granted to him as a private individual, he would be required by law to give, be subject as regards the administration, to the liabilities and duties imposed by such bond'" (*n*). Sect. 9. Duchy of Lancaster.

The Land Transfer Act, 1897, does not bind the Crown; therefore the legal estate in escheated land does not vest in the Solicitor to the Treasury, as the Crown's nominee. Where a widow died, without issue, a bastard and intes- Rights of Crown, recent cases as to. 1899.

(*n*) See Wms. on Exors. 10th ed. pp. 343, 344.

Rights of Crown, recent cases as to.

tate, entitled to both real and personal estate, the grant was made to the Solicitor to the Treasury of her personal estate only, as before the Act (*o*).

1901.

The Court allowed the executors appointed under the will of her late Majesty Queen Victoria to nominate a person to take a number of grants for their use, in the estates of persons who had died domiciled in the County Palatine of Lancaster, intestate and without next of kin (*p*).

Duchy of Cornwall.

Where a person died in Cornwall intestate and without known relations, the Court granted letters of administration of his estate for the use of H.R.H. the Prince of Wales as Duke of Cornwall, but without prejudice to the rights of the Crown (*q*).

Felon.

Sect. 1 of 33 & 34 Vict. c. 23, the statute abolishing forfeiture for felony, has put an end to all the old law as to taking out administration to a deceased felon's effects, and places them on the same footing as other persons.

Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71). Sect. 2.

"By the Intestates' Estates Act, 1884, 'Where the administration of the personal estate of any deceased person is granted to a nominee of her Majesty (whether the Treasury Solicitor or a person nominated by the Treasury Solicitor, or any other person) any action or proceeding by or against such nominee for the recovery of the personal estate of such deceased person, or any share thereof, shall be of the same character and be brought, instituted, and carried on in the same manner, and be subject to the same rules of law and equity (including the rules of limitation under the Statute of Limitations or otherwise) in all respects as if the administration had been granted to such nominee as one of the next of kin of such deceased person' (sect. 2).

(*o*) *Hartley, In goods of*, (1899) P. 40; 68 L. J. P. 16. See also *Frend, In goods of* (1892), 66 L. T. 380.

(*p*) *Best, In goods of*, (1901) P. 333; 71 L. J. P. 9; 85 L. T. 640.

(*q*) *Solicitor of the Duchy of Cornwall* v. *Canning* (1880), 5 P. D. 114; 41 L. T. 737.

"Sect. 3 enacts that 'after the passing of this Act, an information or other proceeding on the part of her Majesty shall not be filed or instituted, and a petition of right shall not be presented in respect of the personal estate of any deceased person or any part or share thereof, or any claim thereon, except within the same time and subject to the same rules of law and equity in and subject to which an action for the like purpose might be brought by or against a subject.' Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71), s. 3.

"Sect. 4 enacts that 'from and after the passing of this Act, where a person dies without an heir and intestate in respect of any real estate, consisting of any estate or interest, whether legal or equitable, in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament, whether devised or not devised to trustees by the will of such person, the law of escheat shall apply in the same manner as if the estate or interest above mentioned were a legal estate in corporeal hereditaments.' Sect. 4.

"Sect. 5 gives to the Court a power of sale of the interest of the Crown in any hereditament corporeal or incorporeal, and directs that the proceeds of such sale shall be paid, invested, and disposed of in manner provided by sect. 4 of the Treasury Solicitor Act, 1876. It further applies the provisions of sect. 1 of the Trustee Act, 1859, to such sale. Sect. 5.

"Sect. 6 gives to the Crown power to waive its right to the real estate of an intestate in certain cases. Sect. 6.

"Sect. 7 defines an intestacy for the purposes of the Act as, 'Where any beneficial interest in the real estate of any deceased person whether the estate or interest of such deceased person was legal or equitable, is, owing to the failure of the objects of the devise or other circumstances happening before or after the death of such person in whole or in part not effectually disposed of, such person shall be deemed to have died intestate in respect of such part of the said beneficial interest as is ineffectually disposed of.' Sect. 7.

"Sect. 8 applies the Act to the Duchy of Lancaster. Sect. 8.

Sect. 9.

"Sect. 9 applies the Act to Ireland" (*r*).

Intestate domiciled abroad, assets in England.

If an intestate was domiciled in a foreign country, whether a foreigner or a British subject, or in his Majesty's dominions out of England, and has left assets here in England, administration must be taken out here as well as in the country of domicil (*s*).

24 & 25 Vict. c. 121, s. 4, foreigner dying in England.

"By stat. 24 & 25 Vict. c. 121, s. 4, 'Whenever a convention shall be made between her Majesty and any foreign state, whereby her Majesty's consuls or vice-consuls in such foreign state shall receive the same or the like powers and authorities as are hereinafter expressed, it shall be lawful for her Majesty by order in council to direct, and from and after the publication of such order in the London Gazette, it shall be and is hereby enacted, that whenever any subject of such foreign state shall die within the dominions of her Majesty, and there shall be no person present at the time of such death who shall be rightfully entitled to administer to the estate of such deceased person, it shall be lawful for the consul, vice-consul, or consular agent of such foreign state, within that part of her Majesty's dominions where such foreign subject shall die, to take possession and have the custody of the personal property of the deceased, and to apply the same in payment of his or her debts and funeral expenses, and to retain the surplus for the benefit of the persons entitled thereto; but such consul, vice-consul, or consular agent shall immediately apply for and shall be entitled to obtain from the proper Court letters of administration of the effects of such deceased person, limited in such manner and for such time as to such Court shall seem fit'" (*t*).

Where the next of kin has died before he has obtained administration it is no defence to an action brought by the person who has been appointed his representative by

(*r*) Wms. on Exors. 10th ed. pp. 344, 345.

(*s*) See *Ibid.* pp. 338—341.

(*t*) See *Ibid.* pp. 339, 340. And see *post*, Chap. XVIII.

the Court, as administrator to the original intestate, that the defendant paid the debt in question to the next of kin, who died without taking out letters of administration (*u*). Next of kin dying before grant.

Further, it must be remembered that though an executor who has intermeddled with the estate is bound to take probate, a person entitled to administration as next of kin to the estate of an intestate is not so bound, even though he may have intermeddled with the estate (*v*). Person entitled not bound to take grant.

"Administration may be granted to the attorney of all the next of kin, provided they reside out of the country, and if the effects are under 20*l.* such administration may be granted whether they are so resident or not" (*x*). Attorney of next of kin.

Such grant will be made to the attorney on the same terms as it would have been made to the party himself (*y*).

The Court will make the grant even though the attorney be resident out of the jurisdiction, provided the sureties be resident within the jurisdiction (*z*). Attorney may be resident out of jurisdiction, but not sureties.

But where a person solely entitled to the grant is resident in this country, and able to take it himself, the Court will decline to decree it to his attorney (*a*).

"If none of the next of kin will take out administration a creditor may by custom do it, on the single ground that he cannot be paid his debt until representation to the deceased is made, and therefore administration is only Grant to

(*u*) See Wms. on Exors. 10th ed. p. 347.

(*v*) See *Ibid.* p. 347. And see on this subject generally, *Ibid.* pp. 346, 347.

(*x*) See *Ibid.* pp. 348—350.

(*y*) *Goldsborough, In goods of* (1859), 1 S. & T. 295; 5 Jur. N. S. 417. See also *Lucas* v. *Lucas* (1758), 3 Cas. temp. Lee, 576; *Reitz, In goods of* (1831), 3 Hagg. 766; *Elderton, In goods of* (1831), 4 Hagg. 210.

(*z*) *Leeson, In goods of* (1860), 1 S. & T. 463; 29 L. J. P. 19; 1 L. T. 74. The Court will, however, sometimes accept sureties resident out of the jurisdiction. See *Reed, In goods of* (1863), 3 S. & T. 439; *Ballingall, In goods of* (1863), 3 S. & T. 441; 32 L. J. P. 138; 9 L. T. 116.

(*a*) *Burch, In goods of* (1861), 2 S. & T. 139; 30 L. J. P. 171; 4 L. T. 451.

creditor.

granted to him, failing every other representative. So letters of administration may be granted to the executors of a creditor" (*b*).

Justifying security.

As a general rule, creditors are not entitled to require the next of kin, or the guardian of the next of kin, to give justifying security, and a very strong case must be made out before a departure from this rule can be allowed (*c*).

All parties interested must be cited.

It may be taken as a general rule that the Court will not, unless by consent, grant administration to a creditor unless all the next of kin and parties interested in the grant, including, since the Land Transfer Act, 1897, the heir-at-law, have been duly cited and had an opportunity of appearing to dispute the claim of such creditor, and that, except by leave of the Court, such citations must be personally served (*d*).

In the case of a small estate, the Court dispensed with the citation of the next of kin on proof that they had notice of the application (*e*).

Creditor having obtained grant may dispute will.

Although a creditor cannot dispute the validity of a will before administration granted, if he succeed in obtaining a grant, he has a right to dispute a will if one be afterwards set up (*f*).

Creditor, what is.

A surety who, *after the death of the principal*, pays off

(*b*) Wms. on Exors. 10th ed. pp. 349, 350, citing Bl. Comm. 505; *Menzies* v. *Pulbrook* (1840), 2 Curt. 850; *Elme* v. *Da Costa* (1791), 1 Phill. 177; *Webb* v. *Needham* (1823), 1 Add. 494; *Jones* v. *Beytagh* (1821), 3 Phill. 635. And see on this subject generally, Wms. on Exors. 10th ed. pp. 349—354, 378, 456, 457, 1058.

(*c*) *John* v. *Bradbury* (1866), L. R. 1 P. & D. 245; 36 L. J. P. 33; 15 L. T. 414.

(*d*) See Wms. on Exors. 10th ed. pp. 351, 352; *Barker, In goods of* (1837), 1 Curt. 592; *Keene, In goods of* (1859), 1 S. & T. 267; 28 L. J. P. 61; 29 L. T. 247; *Pegg* v. *Chamberlain* (1860), 1 S. & T. 528; 2 L. T. 25.

(*e*) *Teece, In goods of*, (1896) P. 6; 65 L. J. P. 1; 73 L. T. 631. In this case the applicant was the clerk to the guardians of the poor, who claimed as creditors.

(*f*) See Wms. on Exors. 10th ed. p. 354, citing *Elme* v. *Da Costa*; *Menzies* v. *Pulbrook*; and *Dabbs* v. *Chisman*, *supra*, note (*b*).

the debt is entitled to administration as a creditor (*g*). But administration of an intestate's estate will not be granted to a person who, after the death of the intestate, buys up a debt due from him (*h*). Even if his debt is barred by the Statute of Limitations, a creditor is allowed to cite the next of kin to accept administration, or to show cause why it should not be granted to him (*i*); and, on their not appearing, he is entitled to the grant, but the bond must contain a condition that he distribute the assets rateably amongst all the creditors (*k*), and, for the future, any creditor on taking out administration must in all cases, if required by the Court, enter into a bond conditional to administer the estate rateably among the creditors of the deceased (*l*).

Husband of deceased creditor.

The husband of a woman who before marriage has partly administered as a creditor, on her death is not entitled in his own right as creditor, but only as representative of his wife (*m*).

(*g*) *Williams* v. *Jukes* (1865), 34 L. J. P. 60.

(*h*) *Depit* v. *Delerieleuse* (1861), 2 S. & T. 131; 30 L. J. P. 86; 4 L. T. 894; *Coles, In goods of* (1864), 3 S. & T. 181; S.C., *nom. Macnin* v. *Coles*, 33 L. J. P. 175; 9 L. T. 519; *Day* v. *Thompson* (1863), 3 S. & T. 169; *Downward* v. *Dickinson* (1865), 3 S. & T. 564; 34 L. J. P. 4; 11 L. T. 641.

(*i*) *Coombs, In goods of* (1865), L. R. 1 P. & D. 193; 35 L. J. P. 78; 14 L. T. 635.

(*k*) *Coombs* v. *Coombs* (1867), L. R. 1 P. & D. 288; 36 L. J. P. 21.

(*l*) *Brackenbury, In goods of* (1877), 2 P. D. 272; 46 L. J. P. 42; 36 L. T. 744.

(*m*) *Risdon, In goods of* (1869), L. R. 1 P. & D. 637; 38 L. J. P. 40; 20 L. T. 330. See also the following older cases in which grants have been made to creditors:—To mortgagee of creditor, *Godfrey, In goods of* (1861), 2 S. & T. 133; 4 L. T. 895; to his assignee or trustee when bankrupt, *Burdett, In goods of* (1876), 1 P. D. 427; 45 L. J. P. 71; 34 L. T. 855; to one creditor of deceased where proceedings have been initiated by another creditor, *Andrews* v. *Murphy* (1861), 4 S. & T. 99; 30 L. J. P. 37. See also *Weare, In goods of* (1892), 66 L. T. 860; *Smith, In goods of* (1892), 67 L. T. 503; *Carroll, In goods of* (1893), 31 L. R. Ir. 388, Prob.; *Sheather, In goods of* (1893), 71 L. T. 848; *Lowe, In goods of* (1898), 78 L. T. 566; *Kingwell, In goods of* (1899), 81 L. T. 461.

12 & 13 Vict. c. 103, s. 16.

By sect. 16 of 12 & 13 Vict. c. 103, it is enacted, "in the event of the death of any pauper having in his possession, or belonging to him, any money or property, the guardians of the union or parish wherein such pauper shall die may reimburse themselves the expenses incurred by them in and about the burial of such pauper, and in or about the maintenance of such pauper at any time during the twelve months previous to the decease" (*n*).

When administration may be granted to party without interest.

"For want as well of creditors as of next of kin, desirous to take out administration, the Court may grant it to any person at its discretion (*o*). In a case where the brother and only next of kin renounced, the Court granted administration to a nephew, although he had no interest" (*p*).

Lunacy.

In a case where the widow of an intestate was a lunatic, and his mother, his only next of kin, was unable to find justifying security, and a suit had been instituted in the Chancery Division and a receiver appointed, administration was granted to the receiver (*q*); and in another case where the next of kin was a lunatic, the Court made a grant to a stranger in blood, the master in lunacy and the next of kin of the lunatic approving the application (*r*).

(*n*) In the following cases grants were made to the guardians of the poor as creditors of the deceased:—*Teece, In goods of*, (1899) P. 6; 65 L. J. P. 41; 73 L. T. 631; *Druce, In goods of* (1899), 68 L. J. P. 120; 81 L. T. 458; and for cases in which grants have been made to the official receiver in bankruptcy of a deceased intestate, see *Conolly, In goods of* (1896), 74 L. T. 461; *Morgan, In goods of* (1896), 75 L. T. 190; *Thacker, In goods of*, (1900) P. 15; 69 L. J. P. 1; 81 L. T. 790.

(*o*) Wms. on Exors. 10th ed. p. 354, citing *Chanter, In goods of, Davis* v. *Chanter* (1844), 14 Sim. 212.

(*p*) Wms. on Exors. 10th ed. pp. 354, 355, citing *Keane, In goods of* (1828), 1 Hagg. 692. See also *Blagrave, In goods of* (1829), 2 Hagg. 83; *Johnson, In goods of* (1863), 2 S. & T. 595; 7 L. T. 337. But see *Allen, In goods of* (1865), 3 S. & T. 559; 34 L. J. P. 1.

(*q*) *Moore, In goods of*, (1892) P. 145; 61 L. J. P. 119. See also *Mayer, In goods of* (1873), L. R. 3 P. & D. 39; 42 L. J. P. 57; 29 L. T. 247.

(*r*) *Hastings, In goods of* (1879), 4 P. D. 73; 47 L. J. P. 30; 39 L. T. 45. See also *Jackson, In goods of*, (1892) P. 257; 61 L. J. P. 126; 67 L. T. 237.

The Court granted administration to a person who had no interest in the estate, where the sole next of kin, the only person entitled in distribution, renounced (*s*). Grant to party without interest. 1901.

Where there is an existing grant of administration, the Court will not make a second grant until the existing grant has been revoked (*t*). No second grant till existing grant revoked.

By the 73rd section of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77) (*u*), the most extensive powers have been conferred on the Court to make, under any special circumstances, any grant which, in any particular case, it may think fit. C. P. Act, 1857, s. 73, grants under.

There must be special circumstances to justify the Court in departing from its ordinary practice and making a grant under this section (*x*); and a general allegation in an affidavit that "it is necessary for the preservation of the personal estate and effects of the deceased that administration should be granted," will not induce the Court to make such a grant; at any rate in the absence of the person properly entitled to the administration (*y*). Must be special circumstances.

The Court will not pass over an executor by reason of his bad character only, he must also be resident out of the United Kingdom (*z*). Bad character of executor not sufficient.

In the following cases the Court made grants of administration under sect. 73 by reason of special circumstances:— Examples of grants under sect. 73, C. P. Act.

(1) To a creditor (*a*); (2) to a trustee of the marriage

(*s*) *Trigg, In goods of*, (1900) P. 42; 69 L. J. P. 47; 82 L. T. 626 (*Johnson, In goods of, supra*, note (*p*), followed). See also *Potter, In goods of* (1900), 69 L. J. P. 53.

(*t*) *Hornbuckle, In goods of* (1890), 15 P. D. 149; 59 L. J. P. 78; 63 L. T. 464.

(*u*) See *ante*, p. 138. See also Wms. on Exors. 10th ed. pp. 355—359.

(*x*) *White, In goods of* (1862), 2 S. & T. 457; 31 L. J. P. 161; 6 L. T. 162.

(*y*) *Cooke, In goods of* (1859), 1 S. & T. 267; 28 L. J. P. 43; *Bateman, In goods of* (1871), L. R. 2 P. & D. 242; 40 L. J. P. 24; 24 L. T. 399.

(*z*) *Samson, In goods of* (1873), L. R. 3 P. & D. 48; 42 L. J. P. 59; 28 L. T. 478.

(*a*) *Fraser, In goods of* (1867), L. R. 1 P. & D. 327; 36 L. J. P. 63; 16 L. T. 154; *Farrands, In goods of* (1876), 1 P. D. 439; *Wens-*

Court of Probate Act, 1857, s. 73, examples of grants under.

settlement of the sole next of kin (*b*); (3) to a trustee appointed by will (*c*); (4) to the trustee in bankruptcy of the sole next of kin (*d*); (5) to the nominee of a married woman on objection by her husband to her taking probate or administration (*e*); (6) to the nominee of a married woman, residuary legatee, without notice to her husband (*f*); (7) to the guardians of minors (*g*); (8) to a residuary legatee with the will annexed (*h*); (9) to the executor under a colonial will (*i*); (10) to a sister of the intestate, limited until the next of kin should apply for administration (*k*); (11) to a sister of the intestate, passing over the mother, who was willing to renounce (*l*); (12) to a sister of the intestate without taking out representation to the father, who had also died intestate (*m*); (13) to the father-in-law of the sole next of kin in

ley, In goods of (1882), 7 P. D. 13; 51 L. J. P. 21; *Atherton, In goods of*, (1892) P. 104; 61 L. J. P. 134; 66 L. T. 267.

(*b*) *Maychell, In goods of* (1879), 4 P. D. 74; 47 L. J. P. 31; 39 L. T. 94.

(*c*) *Cosnahan, In goods of* (1866), L. R. 1 P. & D. 183; 35 L. J. P. 76; 14 L. T. 337; *Stewart, In goods of* (1875), L. R. 3 P. & D. 244; 44 L. J. P. 37; 33 L. T. 72.

(*d*) *Turner, In goods of* (1887), 12 P. D. 18; 56 L. J. P. 41; 57 L. T. 372; *Agnese, In goods of*, (1900) P. 60; 69 L. J. P. 27; 82 L. T. 204.

(*e*) *Warren, In goods of* (1868), L. R. 1 P. & D. 538; 37 L. J. P. 12; *Clerke* v. *Clerke* (1881), 6 P. D. 103; 50 L. J. P. 69.

(*f*) *Pine, In goods of* (1867), L. R. 1 P. & D. 388; 36 L. J. P. 95; 17 L. T. 31.

(*g*) *Hagger, In goods of* (1863), 3 S. & T. 65; 32 L. J. P. 96; 8 L. T. 470; *Burgess, In goods of* (1863), 4 S. & T. 188; 32 L. J. P. 158; 9 L. T. 86; *See, In goods of* (1879), 4 P. D. 86; 48 L. J. P. 70; 40 L. T. 658; *Batterbee, In goods of* (1889), 14 P. D. 39; 58 L. J. P. 38; 60 L. T. 838.

(*h*) *Sawtell, In goods of* (1862), 2 S. & T. 448; 31 L. J. P. 65; 6 L. T. 395; *Crawshay, In goods of*, (1893) P. 108; 62 L. J. P. 91; 68 L. T. 260; *Massey, In goods of*, (1899) P. 270; 68 L. J. P. 127; 81 L. T. 493.

(*i*) *Earl, In goods of* (1867), L. R. 1 P. & D. 450; 36 L. J. P. 127; 16 L. T. 799.

(*k*) *Cholwill, In goods of* (1866), L. R. 1 P. & D. 192; 35 L. J. P. 75; 14 L. T. 338.

(*l*) *Llanwarne, In goods of* (1867), L. R. 1 P. & D. 306; 36 L. J. P. 25; 15 L. T. 193.

(*m*) *Peck, In goods of* (1860), 2 S. & T. 506; 29 L. J. P. 95.

Australia (*n*); (14) to a mother, without requiring her to take out administration to the father (*o*); (15) to the step-mother, for the use and benefit of the sole next of kin, a lunatic without committee (*p*); (16) to a cousin, limited to carry out certain directions contained in a letter (*q*); (17) to a cousin, for the use and benefit of an aged aunt and uncle, the only persons entitled in distribution (*r*); (18) to the guardians of the poor, limited during the lunacy of the sole next of kin, a pauper lunatic (*s*); (19) to the attorney in England of the next of kin abroad, it being unknown when he would return (*t*); (20) to the next of kin and to a person entitled in distribution, jointly, there being special circumstances rendering a joint grant convenient (*u*); (21) to a stranger, no next of kin or creditor being willing, or able, to take the grant (*x*); (22) to a stranger, there being doubt as to the legitimacy of the sole next of kin (*y*); (23) to a person applying in pursuance of an agreement to divide the estate, where doubts had arisen as to the legitimacy of the person claiming to be next of kin (*z*); (24) to the partner of one of the executors of the will, who was mentioned by name in the will, and was therein requested to act for such executor, if he were

Court of Probate Act, 1857, s. 73, examples of grants under.

(*n*) *Jones, In goods of* (1858), 1 S. & T. 13; 27 L. J. P. 17.

(*o*) *Smith, In goods of* (1862), 2 S. & T. 508; 31 L. J. P. 182; 7 L. T. 193.

(*p*) *Burrell, In goods of* (1858), 1 S. & T. 64.

(*q*) *Drinkwater, In goods of* (1862), 2 S. & T. 611; 31 L. J. P. 93; 7 L. T. 251.

(*r*) *Roberts, In goods of* (1858), 1 S. & T. 64.

(*s*) *Findlay, In goods of* (1864), 3 S. & T. 265; 33 L. J. P. 21; 9 L. T. 346; *Eccles, In goods of* (1890), 15 P. D. 1; 59 L. J. P. 5; 61 L. T. 652; *Everley, In goods of*, (1892) P. 50; 61 L. J. P. 53; 65 L. T. 765.

(*t*) *Escot, In goods of* (1859), 4 S. & T. 186; 28 L. J. P. 17.

(*u*) *Grundy, In goods of* (1868), L. R. 1 P. & D. 459; 37 L. J. P. 21; 17 L. T. 451; *Walsh, In goods of*, (1892) P. 230; 61 L. J. P. 123; 67 L. T. 355.

(*x*) *Bateman, In goods of* (1871), L. R. 2 P. & D. 242; 40 L. J. P. 24; 24 L. T. 399.

(*y*) *Hopkins, In goods of* (1875), L. R. 3 P. & D. 235; 44 L. J. P. 42; 33 L. T. 320.

(*z*) *Minshull, In goods of* (1889), 14 P. D. 151; 58 L. J. P. 69; 61 L. T. 257.

Court of Probate Act, 1857, s. 73, examples of grants under.

absent at the time of the testator's death (*a*); (25) to the person with powers of committee of estate of next of kin, who was mentally incapacitated (*b*); (26) to the executor of the widow of intestate husband, the widow having died without taking administration, and being entitled to the whole of the husband's estate, as under 500*l.*, under sect. 1 of Intestates' Estates Act, 1890 (*c*); (27) to a member of the firm of accountants in London in whose hands the books of the intestate's firm had been placed, the next of kin being in the interior of Bolivia, where it took six weeks to communicate with them by telegram and four months by letter, the grant being limited till such time as next of kin should apply (*d*); (28) to the son of the testatrix, whose husband deserted her fifteen years before her death, and had not been heard of since (*e*); (29) to a grandson of the intestate, his next of kin, a son, not having been heard of for twenty-six years (*f*). Generally the Court will not grant administration under this section, to a person entitled to a grant in another character, *e.g.*, as a creditor (*g*); nor to the nominee of the person entitled to the grant (*h*).

But, in *Farrell* v. *Brownbill* (*i*), the Court granted

(*a*) *Taylor, In goods of*, (1892) P. 90; 61 L. J. P. 93; 66 L. T. 266.

(*b*) *Leese, In goods of*, (1894) P. 160; 63 L. J. P. 124; 70 L. T. 810.

(*c*) *Bryant, In goods of*, (1896) P. 159; 65 L. J. P. 96.

(*d*) *Suarez, In goods of*, (1897) P. 82; 66 L. J. P. 98; 77 L. T. 137.

(*e*) *Shoosmith, In goods of*, (1894) P. 23; 63 L. J. P. 64; 70 L. T. 809.

(*f*) *Callicott, In goods of*, (1899) P. 189; 68 L. J. P. 67; 80 L. T. 421.

(*g*) *Fairweather, In goods of* (1861), 2 S. & T. 588; 6 L. T. 788.

(*h*) *Teague* v. *Wharton* (1872), L. R. 2 P. & D. 360; 41 L. J. P. 13; 25 L. T. 764; *Hale, In goods of* (1875), L. R. 3 P. & D. 207; 44 L. J. P. 45; 31 L. T. 799.

(*i*) (1863), 3 S. & T. 467. See also *Potter, In goods of*, (1899) P. 265; 68 L. J. P. 97; 81 L. T. 234; *Clayton, In goods of* (1886), 11 P. D. 76; 55 L. J. P. 26. But see *Richardson, In goods of* (1871), L. R. 2 P. & D. 244; 40 L. J. P. 36; 25 L. T. 384, in which it was held that the consent of all persons

Court of Probate Act, 1857, s. 73, examples of grants under.

administration under this section, with the consent of all parties interested, to their nominee, who took no interest in the property himself.

The section is wholly inapplicable where there is no absence of persons entitled to administration, and no insolvency. It would then be a mere arbitrary selection on the part of the Court (*k*).

The Court will not exercise the power conferred on it by the above section, by passing over a person entitled to a grant of administration in favour of a creditor, when the fact of the insolvency of the intestate is disputed (*l*); unless there is no next of kin competent to take administration (*m*).

The table on the next page shows the order in which the estate of an intestate should be distributed, and the amounts to which each degree of relationship is entitled.

interested is not sufficient ground for departing from the general rules as to grants.

(*k*) *Haynes* v. *Matthews* (1860), 1 S. & T. 460.

(*l*) *Hawke* v. *Wedderburne* (1868), L. R. 1 P. & D. 594; 37 L. J. P. 33; 18 L. T. 336.

(*m*) *Farrands, In goods of* (1876), 1 P. D. 439.

[TABLE OF INTESTACY.

If the Intestate die, leaving—	*His representatives take in the proportion following—*
Wife and child, or children	One-third to wife, rest to child or children; and if children are dead, then to the representatives (that is, their lineal descendants), except such child or children, not heirs-at-law, who had estate by settlement of intestate, or were advanced by him in his lifetime, equal to other shares.
Wife only, no blood relations	Half to wife, other half to the Crown.
Wife, no near relations	Half to wife, rest to next of kin in equal degree to intestate, or their legal representatives.
No wife or child	All to next of kin and their legal representatives.
No wife, but child, children, or representatives of them, whether such child or children by one or more wives	All to him, her, or them.
Children by two wives	Equally to all.
If no child, children, or representatives of them	All to next of kin in equal degree to intestate.
Child, and grandchild by deceased child	Half to child, half to grandchild, who takes by representation.
Husband	Whole to him.
Father, and brother or sister	Whole to father.
Mother, and brother or sister	Whole to them equally.
Wife, mother, brothers, sisters, and nieces	Half to wife, residue to mother, brothers, sisters, and nieces.
Wife, and father	Half to wife, and half to father.
Wife, mother, nephews, and nieces	Half to wife, one-fourth to mother, and other fourth to nephews and nieces.
Wife, brothers or sisters, and mother	Half to wife, half to brothers or sisters and mother.
Mother, but no wife, child, father, brother, sister, nephew, or niece	The whole to mother.
Wife, and mother	Half to wife, half to mother.
Brother or sister of whole blood, and brother or sister of half blood	Equally to both.
Posthumous brother or sister, and mother	Equally to both.
Posthumous brother or sister, and brother or sister born in lifetime of father	Equally to both.
Father's father, and mother's mother	Equally to both.
Uncle's or aunt's children, and brother's or sister's grandchildren	Equally to all.
Grandmother, uncle, or aunt	All to grandmother.
Two aunts, nephew, and niece	Equally to all.
Uncle, and deceased uncle's child	All to uncle.
Uncle by mother's side, and deceased uncle or aunt's child	All to uncle.
Nephew by brother, and nephew by half-sister	Equally *per capita*.*
Nephew by deceased brother, and nephews and nieces by deceased sister	Each in equal shares *per capita*, and not *per stirpes*.
Brother and grandfather	Whole to brother.
Brother's grandson, and brother's or sister's daughter	All to daughter.
Brother, and two aunts	All to brother.
Brother, and wife	Half to brother, half to wife.
Mother, and brother	Equally.
Wife, mother, and children of a deceased brother (or sister)	Half to wife, a fourth to mother, and a fourth *per stirpes* to deceased brother's or sister's children.
Wife, brother, or sister, and children of a deceased brother or sister	Half to wife, one-fourth to brother or sister *per capita*, one-fourth to deceased brother's or sister's children *per stirpes*.
Brother or sister, and children of a deceased brother or sister	Half to brother or sister *per capita*, half to children of deceased brother or sister *per stirpes*.
Grandfather, no nearer relation	All to grandfather.

* That is, taking individually and not by representation. Thus, if A. die, leaving three brothers or sisters, they each take an equal part of his effects in his or her own right. But if either of them die, leaving children, his children would take his share *per stirpes*, that is *through him*, and not in their own rights.

CHAPTER XVII.

OF ADMINISTRATION DE BONIS NON (*a*).

"THIS subject may be treated with reference, 1st, to the death of an executor; 2ndly, to the death of an administrator. Grant *de bonis non.*

"(1) With respect to the consequences of the death of an executor. If a sole executor happens to die, without having proved the will, the executorship . . . . . is not transmissible to his executor, but is wholly determined, and administration with the will annexed must be committed to the person entitled. . . . . Consequences of the death of an executor.

"When the administration is granted under such circumstances, although the executor may have administered in part by disposing of the testator's effects, &c., yet the administration shall not be *de bonis non administratis*, but an immediate administration: because, although the acts done by the executor are good, the administering is an act *in pais* of which the Court of Probate cannot take notice.

"If one of two executors dies before or after probate, no interest is transmissible to his own executor, but the whole representation survives to his companion. Where such surviving executor, or where a sole executor, dies after probate, having made a will, appointing his own executor, the entire representation of the original testator will be transmitted to him. But where such surviving executor or sole executor dies after probate, intestate, then no interest is transmissible to his administrator: but administration of another sort becomes necessary, which is called Where sole or surviving executor dies after probate intestate, there must be

(*a*) See on this subject Wms. on Exors. 10th ed. pp. 379—384.

administration *de bonis non*.

administration *de bonis non*, that is, of the goods of the original testator left unadministered by the former executor" (*b*).

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 79.

Before the passing of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), "if there were several executors, and the rest renounced and one alone proved the will, upon the death of him who had proved, no interest was transmissible to his executor; but the representation survived to the co-executors, who might retract their former renunciation and assume the executorship" (*c*).

Rights of an executor renouncing probate to cease as if he had not been named in the will.

By sect. 79, however, of that statute it is enacted that, "where any person, after the commencement of this Act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor."

An executor not acting or not appearing to a citation to be treated as if he had renounced.

And by sect. 16 of the Court of Probate Act, 1858 (21 & 22 Vict. c. 95), it is further enacted that, "whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor."

Consequences of the death of an administrator or of one entitled to administration.

(2) With respect to the consequences of the death of an administrator, or of one entitled to administration, an administrator, whether with or without a will annexed, stands in an entirely different position to an executor. For

(*b*) See on this subject Wms. on Exors. 10th ed. pp. 379, 380.
(*c*) *Ibid.* pp. 380, 381.

whereas an executor is a person selected to take charge of his estate and to manage his affairs by the testator himself, an administrator, on the other hand, "is merely an officer of the Court, prescribed to it by Act of Parliament, in whom the deceased has reposed no trust; and therefore, on the death of the administrator, no authority can be transmitted by him to his executor or administrator, but it results to the Court to appoint another officer" (*d*).

Distinction between offices of executor and administrator.

Therefore, on the death of a sole administrator, *whether he died testate or intestate*, it becomes in every case necessary at once to appoint an administrator *de bonis non* in order to effect a representation to the estate of the original deceased.

Where, however, a joint grant of administration has been made in the first instance the case is different, for it is an office so far analogous to that of executor that it survives. The survivor will therefore become the sole administrator, and as long as he continues to exercise his office, no grant *de bonis non* will be made.

Distinction between sole and joint administration with respect to grants *de bonis non*.

If the original testator dies in any place out of England, and the executor proves his will there and afterwards dies, having made his will and appointed his own executor, and such executor proves the latter will here, this will not make such executor the representative of the original testator, but administration *de bonis non* must be obtained in England (*e*).

Testator dying out of jurisdiction.

A grant to an attorney of an executor has not by the executor's death, when he has appointed executors, been deemed to break the chain of representation, as a will proved by the attorney of an executor is the same thing as if actually proved by the executor himself (*f*).

Grant to attorney of executor does not break chain of representation.

Where the estate of a testatrix had been administered

Estate ad-

(*d*) See on this subject Wms. on Exors. 10th ed. p. 382.

(*e*) *Twyford* v. *Trail* (1834), 7 Sim. 92; *Gaynor, In goods of* (1869), L. R. 1 P. & D. 723; 38 L. J. P. 79; 21 L. T. 367.

(*f*) *Bayard, In goods of* (1848), 1 Robert. 769; 7 Notes of Cas. 117; *Murguia, In goods of* (1884), 9 P. D. 236; 53 L. J. P. 47.

ministered except as to one legacy.

except as to one legacy, and the executor had died without leaving any legal personal representative, the Court granted administration with the will annexed to the legatee, without requiring the representative of the executor or residuary legatees, who could not be found except at great expense, to be cited, but ordered the sureties to justify (*g*).

Grant *de bonis non* to specific legatee.

Upon an application for a grant *de bonis non*, where it appeared that the residuary legatee, resident abroad, had had notice by letter, and that he had no beneficial interest, there being actually no residue, the grant was made to a specific legatee, without requiring the residuary legatee to be cited or to renounce, but subject to the filing of an affidavit verifying the finding of the Chief Clerk's certificate that after payment of the debts and legacies there would be no residue (*h*).

Creditor.

Where a woman obtained a grant of the estate of a deceased intestate as a creditor, and then married and died, the Court held that the husband was not entitled to a grant *de bonis* to the estate of such deceased intestate as a creditor, but only as the representative of his wife (*i*).

With the will annexed.

In making grants *de bonis non*, the Court will be guided by the same rules that would guide it with respect to original grants. Where there has been a grant of administration with the will annexed, the grant would, unless by consent of all parties, or for good cause shown to the contrary, be made as a general rule to the party surviving who takes the greatest interest under the will. As, for example, if an original grant were made to the residuary legatee, on his death, leaving a portion of the property unadministered, the Court would, except under special circumstances, make a grant *de bonis non with the will annexed* to one or other of the principal legatees (*k*).

To party taking greatest interest under will.

(*g*) *King, In goods of* (1883), 8 P. D. 162; 52 L. J. P. 93.

(*h*) *Wilde, In goods of* (1888), 13 P. D. 1; 57 L. J. P. 7; 57 L. T. 815.

(*i*) *Risdon, In goods of* (1869), L. R. 1 P. & D. 637; 38 L. J. P. 40; 20 L. T. 330.

(*k*) But see *Watts, In goods of*

General rule as to representation or consent of parties interested.

It may, however, be taken as a safe general rule with respect to this, and indeed every other application made in the Probate Division, that the Court will not act unless all the parties having any claim to the grant are either represented before it, or consent to the application, or have renounced their claim, or have been cited to appear, or in some other way have had due notice of the proceeding. And although the Court both can and will—if it thinks just—dispense with the presence, consent, renunciation, or citation, of such parties, it will not do so unless satisfied that there are some special circumstances existing which render such dispensation desirable in the interests of justice.

Administrator dying leaving portion of estate unadministered.

Where an ordinary administrator dies leaving a portion of the estate unadministered, it is the established practice of the Court to consider who were the next of kin at the time of the death of the intestate, and not who may happen to be the next of kin at the time of the grant *de bonis non*.

Next of kin at time of death only considered.

For it has been held that the statutes relating to the appointment of administrators have no application to any except such as were next of kin at the time of the death of the intestate. Therefore, if all such be dead when the grant *de bonis non* is required, it is the practice of the Court to make the grant according to its own rules, and the general rule is to make the grant to him who has the largest interest in the effects of the original intestate (*l*).

Party originally entitled in distribution preferred to party having derivative interest.

"The proposition, however, that if all who were next of kin at the time of the death of the intestate are dead, then the representative of such next of kin, being entitled to the beneficial interest, is also entitled to administration *de bonis non*, must, it appears, be understood with this limitation, viz., that a person originally in distribution is preferred to the representative of the next of kin (*m*).

(1860), 1 S. & T. 538; 29 L. J. P. 108.

(*l*) See Wms. on Exors. 10th ed. p. 383.

(*m*) Wms. on Exors. 10th ed. p. 384; *Middleton, In goods of* (1830), 2 Hagg. 61.

Practice as to which of persons entitled to grant preferred.

According to the general practice a party having a direct interest is preferred to those entitled in a representative character, but the matter is in the discretion of the Court, which will have regard to special circumstances" (*n*).

Assignee in bankruptcy of administrator.

An assignee in bankruptcy of an administrator who is out of the jurisdiction is a creditor within the meaning of 38 Geo. 3, c. 87, s. 1, and 21 & 22 Vict. c. 95, s. 18, and as such may obtain administration *de bonis non* of the intestate limited to the fund to which the assignee is entitled (*o*).

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 73.

The 73rd section of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), applies as much to *grants de bonis non* as to original grants (*p*).

Joint grant under.

So a joint grant of administration *de bonis non* was made under this section to a next of kin and a person entitled in distribution, the next of kin consenting to the grant, and there being special circumstances rendering such joint grant convenient (*q*).

Administrator *de bonis non* committing suicide.

Where a grant *de bonis non* had been made to one of the grandchildren and residuary legatees by a testator, and, subsequently, the administrator *de bonis non* disappeared leaving a letter to the effect that his body would be found at the bottom of the river, the Court revoked the grant *de bonis non* so made to him, and made a similar grant in favour of another of the grandchildren and residuary legatees of the original testator (*r*).

The following are some recent cases in which the Court has made grants *de bonis non* :—

Grants

Where administration had been granted to the attorney of one of two next of kin, both of whom resided out of the

(*n*) Wms. on Exors. 10th ed. p. 384; *Carr, In goods of* (1867), L. R. 1 P. & D. 291; 16 L. T. 181; *Kinchella, In goods of*, (1894) P. 264; 63 L. J. P. 162; 71 L. T. 263.

(*o*) *Hammond, In goods of* (1881), 6 P. D. 104; 50 L. J. P. 70; 44 L. T. 649.

(*p*) *Ante*, p. 138.

(*q*) *Grundy, In goods of* (1868), L. R. 1 P. & D. 459; 37 L. J. P. 21; 17 L. T. 451.

(*r*) *Covell, In goods of* (1890), 15 P. D. 8; 59 L. J. P. 7; 61 L. T. 620.

jurisdiction, and the administrator died, leaving the estate partly unadministered, the Court, upon proof of notice to the next of kin, for whose benefit the administration had been granted, granted administration *de bonis non* to the attorney of the other next of kin (*s*). *de bonis non*, recent examples of. 1898.

Where an intestate died leaving a widow and six children by a former marriage, and the widow, who obtained administration, could not be found, the Court, on the application of the children, granted administration *de bonis non* to one of their number (*t*). 1900.

The Court having, with the consent of all parties interested in the estate of a deceased testator, made a grant of administration with the will annexed to a stranger, as the nominee of such parties, on the ground (*inter alia*) that he had a special knowledge of the business of the deceased, on the death of such administrator, made a grant *de bonis non* to his partner (*u*). 1900.

(*s*) *Barton, In goods of*, (1898) P. 11; 67 L. J. P. 10; 77 L. T. 629. See also *Bond, In goods of* (1894), 70 L. T. 813.

(*t*) *Loveday, In goods of*, (1900) P. 154; 69 L. J. P. 48; 82 L. T. 692.

(*u*) *Potter, In goods of* (1900), 69 L. J. P. 53. See also *Agnese, In goods of*, (1900) P. 60; 69 L. J. P. 27; 82 L. T. 204.

CHAPTER XVIII.

OF LIMITED GRANTS (*a*).

Limited grants, what are.

"BESIDES the administrations already discussed which extend to the whole personal estate of the deceased, and terminate only with the life of the grantee, it is competent to the Court to grant *limited* administrations, which are confined to a particular extent of time, or to a specified subject-matter" (*b*).

These will be dealt with in the following order:—

(1) Administration *durante minore ætate* (*c*).
(2) Administration *pendente lite* (*d*).
(3) Administration *durante absentiâ* (*e*).
(4) Other temporary and limited administrations (*f*).

Definition of.

If the person appointed sole executor, or he to whom, in case of intestacy, the right of administration has devolved under the statutes, be within age, a peculiar sort of administration must be granted, which is called an administration *durante minore ætate*. In the former case it is obviously a species of administration with the will annexed.

Not within 21 Hen. 8, c. 5.

This sort of administration has been frequently held not to be within the statute of 21 Hen. 8, c. 5, and it was therefore discretionary with the Spiritual Court to grant it to whoever it thought fit. The person to whom it was usually granted was the guardian whom the Spiritual

(*a*) See on this subject generally, Wms. on Exors. 10th ed. pp. 385—419, and for practice, *post*, Part II.
(*b*) *Ibid.* p. 385.
(*c*) See *Ibid.* pp. 386—397.
(*d*) See *Ibid.* pp. 398—403.
(*e*) See *Ibid.* pp. 403—408.
(*f*) See *Ibid.* pp. 408—419.

Court had a right by law to appoint for a personal estate (*g*).

38 Geo. 3, c. 87, s. 6. Where an infant is sole executor, administration to be granted to the guardian, &c.

By sect. 6 of 38 Geo. 3, c. 87, it is enacted that, "where an infant is sole executor, administration, with the will annexed, shall be granted to the guardian of such infant, or to such other person as the Spiritual Court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him" (*h*).

Distinction between "*infant*" and "*minor*."

"With respect to the appointment of guardian a distinction exists between an infant and a minor. The former is so denominated if under seven years of age; the latter from seven to twenty-one. The Court *ex officio* assigns a guardian to an infant; the minor himself may nominate his guardian, who is then admitted in that character by the judge; but if the minor makes an improper choice the Court will control it. According to the practice of the Prerogative Court, the guardianship was granted to the next of kin of the child, unless sufficient objection to him was shown" (*i*).

Of administration *durante minore ætate*.

Guardianship of infants.

The father of the infant had therefore the best right to be appointed, and was as a general rule preferred by the Court. If the father was not living, the guardian, if any, appointed by the father's deed or will under 12 Car. 2, c. 24, was preferred (*k*).

Discretion

The Court may in its discretion pass by the next of kin (*l*); and on one occasion a creditor was appointed

(*g*) See on this subject generally, Wms. on Exors. 10th ed. pp. 386, 387.

(*h*) *Ibid.* p. 391.

(*i*) *Ibid.* pp. 387, 388, citing *Fawkener* v. *Jordan* (1755), 2 Cas. temp. Lee, 327; *Ewing, In goods of* (1728), 1 Hagg. 381.

(*k*) *Morris, In goods of* (1862), 2 S. & T. 360; 31 L. J. P. 80; 5 P. L. T. 768.

(*l*) *Ewing, In goods of, supra,* note (*i*); *Quick* v. *Quick* (1864), 3 S. & T. 442; 33 L. J. P. 146; 10 L. T. 619; *Burchmore, In goods of* (1874), L. R. 3 P. & D. 139; 43 L. J. P. 1; 29 L. T. 377; *Gardiner, In goods of* (1884), 9 P. D. 66; 53 L. J. P. 31; *Webb, In goods of* (1888), 13 P. D. 71; 57 L. J. P. 36; 58 L. T. 683.

of Court.

guardian to minors, who had no known relations, for the purpose of taking out administration to their father who had died intestate (*m*).

Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), ss. 1, 2.

By the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), ss. 1, 2, it is enacted "that on the death of the father of an infant, the mother, if surviving, shall be the guardian of such infant, either alone, when no guardian has been appointed by the father, or jointly with any other guardian appointed by the father. When the guardian has been appointed by the father, or if such guardian is dead or refuses to act, the Court may appoint a guardian or guardians to act jointly with the mother. And by sect. 3 (1) the mother of any infant may by deed or will appoint a guardian or guardians after the death of herself and the father; and where guardians are appointed by both parents, they shall act jointly. And by sect. 4, every guardian under the Act is to have all the powers of a guardian appointed under the Act of 12 Car. 2, c. 24" (*n*).

Minor wife.

Where a wife is a minor, and entitled to administration as sole next of kin, she may elect her husband as guardian to take administration for her use and benefit until she attain her majority (*o*).

Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.

Grants to guardians of minors under sect. 73.

Where the persons entitled in distribution to the effects of an intestate were minors, and their next of kin were abroad, or under other special circumstances, the Court, under the 73rd section of the 20 & 21 Vict. c. 77, granted administration for their use and benefit to a guardian elected by them, or appointed by the Chancery Division (*p*).

(*m*) *Peck, In goods of* (1858), 1 S. & T. 141; 27 L. J. P. 106. See also *Burgess, In goods of* (1863), 4 S. & T. 188; 32 L. J. P. 158; 9 L. T. 86.

(*n*) Wms. on Exors. 10th ed. p. 390.

(*o*) *Ibid.* p. 388.

(*p*) See *Hagger, In goods of* (1863), 3 S. & T. 65; 32 L. J. P. 96; 8 L. T. 470; *Batterbee, In goods of* (1889), 14 P. D. 39; 58 L. J. P. 38; 60 L. T. 838; *Mustapha, In goods of* (1890), 59 L. J. P. 61; 62 L. T. 606; *Roe, In goods of* (1892), 66 L. T. 266; *Lilley, In goods of*

Of administration *pendente lite.*

"In a case of controversy in the Spiritual Courts concerning the right of administration to an intestate, it seems to have been admitted, that it was competent to the Ordinary to appoint an administrator *pendente lite;* yet where the controversy before the Ordinary respected a will, it was once considered that a grant of this species of administration was utterly void (*q*). But since the case of *Walker* v. *Woollaston* (*r*), . . . it has been settled, that the Court has power to grant administration *pendente lite* as well touching an executorship as the right to administration" (*s*).

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 70.

Now by the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 70, "Pending any suit touching the validity of a will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court, and act under its direction."

(1897), 76 L. T. 164; *Ardern, In goods of,* (1898) P. 147; 67 L. J. P. 70; 78 L. T. 536.

(*q*) *Robins' case* (1750), Moore, 636; *Smyth* v. *Smyth* (1672), 3 Keb. 54; *Frederick* v. *Hook* (1690), Carth. 153.

(*r*) (1731) 2 P. Wms. 589.

(*s*) Wms. on Exors. 10th ed. p. 398. For cases as to administration *pendente lite,* previous to the passing of the Court of Probate Act, 1857, see *Wills* v. *Rich* (1742), 2 Atk. 286; *Maskeline* v. *Harrison* (1756), 2 Cas. temp. Lee, 258; *Young* v. *Brown* (1828), 1 Hagg. 54; *Northey* v. *Cock* (1823), 1 Add. 329; *Stratton* v. *Stratton* (1755), 2 Cas. temp. Lee, 49; *Colvin* v. *Fraser* (1830), 2 Hagg. 266, 613; *Hellier* v. *Hellier* (1754), 1 Cas. temp. Lee, 381; *Bond* v. *Bond* (1753), *Ibid.* 333; *Stanley* v. *Bernes* (1830), 1 Hagg. 221; *Jones* v. *Goodrich* (1840), 10 Sim. 328; 9 L. J. Ch. 120; *Goodrich* v. *Jones* (1839), 2 Curt. 457; *Gallivan* v. *Evans* (1808), 1 Ball & Beatt. 192; *Adair* v. *Shaw* (1803), 1 Scho. & Lef. 254. And see on the subject of administration *pendente lite* generally, Wms. on Exors. pp. 398—403.

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 71. Of administration *pendente lite*.

And by sect. 71, "It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the Court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the Court may direct."

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 72. Remuneration to administrators *pendente lite* and receivers.

And by sect. 72, "The Court of Probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court think fit."

C. P. Act, 1858 (21 & 22 Vict. c. 95), s. 22. Administration pending suit deemed to apply to appeals.

By sect. 22 of the Court of Probate Act, 1858 (21 & 22 Vict. c. 95), "All the provisions contained in 'The Court of Probate Act,' respecting grants of administration pending suit, shall be deemed to apply to the case of appeals to the House of Lords under the said Act."

C. P. Act, 1858, s. 21. The Court of Probate may require security from a receiver of real estate.

And by sect. 21, "It shall be lawful for the Court of Probate to require security by bond, in such form as by any rules and orders shall from time to time be directed, with or without sureties, from any receiver of the real estate of any deceased person appointed by the said Court, under sect. 71 of the 'Court of Probate Act'; and the Court may, on application made on motion or in a summary way, order one of the registrars of the Court to assign the same to some person to be named in such order; and such person, his executors or administrators, shall thereupon be entitled to sue on the said security, or put the same in force in his or their own name or names, both at law and in equity, as if the same had been originally given to him instead of to the judge of the said Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount due in virtue thereof."

Sect. 70.

The Court has power under sect. 70 (C. P. Act, 1857) to direct the manner in which the administrator *pendente*

lite shall discharge claims on the estate of the deceased (*t*), and to appoint an administrator *pendente lite* at the instance of a person who is not a party to the suit (*u*).

Of administration *pendente lite.*

Where in a probate action there was an appeal to the House of Lords, after judgment establishing a will, the Court, pending appeal, granted letters of administration *pendente lite* to the executors of the will that had been pronounced for (*x*).

Administrator *pendente lite* appointed pending appeal to House of Lords.

Where a widow had been appointed executrix and universal legatee of her husband and had died without having taken probate, litigation having arisen respecting her will, the Court granted administration *pendente lite* to her husband's estate as well as her own (*y*).

Executrix dying without taking probate, administration *pendente lite* to estate of original testator. *Ibid.*

Subsequently whilst following the above decision, Butt, J., expressed a doubt whether in that case the attention of the Court had been sufficiently called to the words of the 70th section. The will in dispute was the will of the widow, and there was no *lis pendens* touching the husband's will, and the words of the section are, "pending any suit touching the validity of the will of any deceased person" (*z*).

The Court has held that it has no jurisdiction to appoint a receiver of the real estate of the deceased unless there is a suit pending touching the actual validity of the will. It will not suffice if the dispute be merely as to the appointment of executors, although the will may affect the realty (*a*).

Receiver cannot be appointed unless the validity of the will is disputed.

Before granting administration *pendente lite* the Court

Court must

(*t*) *Charlton* v. *Hindmarsh* (1860), 1 S. & T. 519; 2 L. T. 24.

(*u*) See *Tichborne* v. *Tichborne* (1869), L. R. 1 P. & D. 73; 38 L. J. P. 55; 20 L. T. 820; followed in *Cleaver, In goods of*, (1895) P. 319; 74 L. J. P. 164; *Evans, In goods of* (1890), 15 P. D. 215; 60 L. J. P. 18; 63 L. T. 254.

(*x*) *Wright* v. *Rogers* (1869), L. R. 2 P. & D. 179; 40 L. J. P. 8; 23 L. T. 569.

(*y*) *Dawes, In goods of* (1871), L. R. 2 P. & D. 147; 23 L. T. 397.

(*z*) *Fawcett, In goods of* (1889), 14 P. D. 152; 58 L. J. P. 87; 61 L. T. 303.

(*a*) *Grant* v. *Grant* (1869), L. R. 1 P. & D. 654; 28 L. J. P. 55; 20 L. T. 684.

be satisfied of necessity for administration *pendente lite*.

must be satisfied of the necessity for an administrator, and the later practice of the Prerogative Court was to appoint an administrator *pendente lite* in all cases where the Court of Chancery would appoint a receiver (*b*).

Estate of deceased share of business still carried on by surviving partner.

Where the estate of the deceased consists of his share of a business which he was carrying on in partnership at the time of his death, and which is still carried on by a surviving partner, the Court will not appoint an administrator *pendente lite* against the will of the surviving partner, unless a strong case is made that he dealt improperly with the business (*c*); neither will the Court appoint an administrator *pendente lite* where there is a person named in the will as executor, whose appointment is not questioned and who is able to act (*d*).

Where executor whose appointment is not disputed willing to act.

Grant *pendente lite* to one of litigants; to receiver in Chancery.

Administration *pendente lite* limited to certain property has been granted by consent to one of the litigant parties (*e*), and the same grant has also been made to a person who had been receiver in Chancery of the same estates (*f*).

Duties of administrator *pendente lite* commence from appointment, and continue until appeal disposed of.

The duties of an administrator and receiver pending suit commence from the date of the order of appointment, and, if the decree in the action is appealed from, do not cease until the appeal has been disposed of (*g*). But, in the absence of any appeal, the functions of an administrator *pendente lite* terminate with a decree pronounced in favour of a will, and do not continue until the executors obtain probate. The case is the same if there are no executors (*h*).

Judicature Act, 1873, s. 25 (8),

By the Judicature Act, 1873, sect. 25 (8), any judge of the High Court may appoint a receiver of the estate of a

(*b*) *Bellew* v. *Bellew* (1865), 4 S. & T. 58; 34 L. J. P. 125; 13 L. T. 247.

(*c*) *Horrell* v. *Witts* (1866), L. R. 1 P. & D. 103; 35 L. J. P. 55; 14 L. T. 137.

(*d*) *Mortimer* v. *Paull* (1870), L. R. 2 P. & D. 85; 39 L. J. P. 47; 22 L. T. 631.

(*e*) *De Chatelain* v. *Pontigny* (1858), 1 S. & T. 34; 27 L. J. P. 18.

(*f*) *Queen's Proctor* v. *Williams*, 2 S. & T. 353; 31 L. J. P. 9.

(*g*) *Taylor* v. *Taylor* (1881), 6 P. D. 29; 50 L. J. P. 45.

(*h*) *Wieland* v. *Bird*, (1894) P. 262; 63 L. J. P. 162; 71 L. T. 267.

deceased person, before a grant of probate or administration, notwithstanding there is no *lis pendens*. Any such application, being on the way to probate proceedings, should be made in the Probate Division, and if made elsewhere will not be encouraged (*i*). receiver where no *lis pendens*.

So where an executor before obtaining probate was improperly dealing with the estate, the Court gave his co-executor leave to issue a writ against him claiming an injunction to restrain him from dealing with the estate before probate and praying for the appointment of a receiver (*k*). Executor improperly intermeddling before probate; injunction; receiver.

A caveat was entered against probate of a will. The executor named in the will warned it, and the party who had entered the caveat appeared. Before anything further had been done, the party who had entered the caveat moved for an order for a receiver and administrator *pendente lite*—held by the Court of Appeal (affirming the decision of the President and explaining *Parker, In re, supra*, note (*i*)) that there was no jurisdiction to make the order, for the caveat proceedings did not constitute a *lis pendens*, and as no writ had been issued, there was no application to the Court on which the Court could act (*l*). Receiver cannot be appointed where caveat has been entered, warned and appeared to, but no writ issued. No *lis pendens* before writ. Per C. A., 1896.

If the executor named in the will or the next of kin were out of the kingdom, the Ecclesiastical Courts always had power before probate obtained, or letters of administration issued, of granting to another a limited administration *durante absentiâ*, but such absence was held to mean an absence out of the realm (*m*). Of administration *durante absentiâ*.

"But when probate was once granted, and the executor Practice of

(*i*) *Parker, In re* (1885), 54 L. J. Ch. 694.

(*k*) *Moore, In goods of* (1888), 13 P. D. 36; 57 L. J. P. 37; 58 L. T. 386.

(*l*) *Salter* v. *Salter*, (1896) P. 291; 65 L. J. P. 117; 75 L. T. 7, C. A. See also *Wiggins* v. *Hudson* (1899), where it was held that a receiver *pendente lite* could not be appointed without notice to the heir-at-law.

(*m*) Wms. on Exors. 10th ed. pp. 403, 404. And see, on the subject of administration *durante absentiâ* generally, *Ibid.* pp. 403—408.

Ecclesiastical Courts.

had gone abroad, the Ecclesiastical Courts did not feel themselves authorized to grant new administration on the ground that the executor had left the kingdom. Nor could a court of equity interfere by appointing a receiver: . . . . the consequence . . . . was that there was no person existing within the jurisdiction of the courts of law or equity duly authorized to appear and collect the debts. To remedy this inconvenience, the statute 38 Geo. 3, c. 87 (usually called Mr. Simeon's Act), was passed," by sect. 1 of which it is enacted "that, at the expiration of twelve calendar months from the death of any testator, if the executors or executor to whom probate of the will shall have been granted, are, or is, then residing out of the jurisdiction of his Majesty's courts of law and equity, it shall be lawful for the Ecclesiastical Court, which hath granted probate of such will, upon the application of any creditor, next of kin, or legatee, grounded on affidavit hereinafter mentioned, to grant such special administration as hereinafter is also mentioned; which administration shall be written or printed upon paper or parchment, stamped only with one five shilling stamp, and shall pay no further or other duty to his Majesty, his heirs or successors" (*n*).

38 Geo. 3, c. 87, s. 1.

If after a certain period the executor to whom probate is granted shall not reside within the jurisdiction of his Majesty's Courts, on application of a creditor, &c., special administration may be granted, for which a 5*s*. stamp duty shall be paid.

Applied only to executors.

38 Geo. 8, c. 87, extended to administrators.

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 74.

This statute applied only to executors; therefore, by the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 74, it is enacted that "the provisions of an Act passed in the thirty-eighth year of his late Majesty King George the Third, chapter eighty-seven, shall apply (in like manner) to all cases where letters of administration have been granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of her Majesty's courts of law and equity."

Affidavit to be sworn by

The affidavit mentioned in sect. 1 of 38 Geo. 3, c. 87—a form of which was prescribed in sect. 2 of the statute—contained an averment that the deponent was desirous of

(*n*) Wms. on Exors. 10th ed. pp. 404, 405.

exhibiting a bill in equity; and sect. 3 contained a form of grant limited to proceedings in equity. It was, therefore, held that the Act applied only to cases where there were proceedings in equity.

applicant under 38 Geo. 3, c. 87.

This state of things continued until the passing of the Court of Probate Act, 1858 (21 & 22 Vict. c. 95), by sect. 18 of which it is enacted that "the provisions of an Act passed in the thirty-eighth year of George the Third, chapter eighty-seven, and of 'The Court of Probate Act,' shall be extended to all executors and administrators residing out of the jurisdiction of her Majesty's courts of law and equity, whether it be or be not intended to institute proceedings in the Court of Chancery, and to all grants made before and subsequently to the passing of the last-mentioned Act, and it shall be lawful to alter the language of the grant prescribed by the first-named statute so as to make it apply to grants made in the Court of Probate under the said last-mentioned Act."

Provisions of 38 Geo. 3, c. 87, and 20 & 21 Vict. c. 77, extended to all cases of executors and administrators.

C. P. Act, 1858 (21 & 22 Vict. c. 95), s. 18.

An assignee in bankruptcy of an administrator who is out of the jurisdiction is a creditor within the meaning of 38 Geo. 3, c. 87, s. 1, and 21 & 22 Vict. c. 95, s. 18, and as such may obtain administration *de bonis non* of the intestate, limited to the fund to which the assignee is entitled (*o*).

Assignee in bankruptcy of administrator out of jurisdiction.

The above Acts have been held to apply to the case of the executor of an executor (*p*).

Acts apply to the case of the executor of an executor.

Though the *legatee* only is mentioned in the 38 Geo. 3, c. 87, yet the Court granted a limited administration to the personal representative of a legatee, the executor being out of the jurisdiction, holding that the case came within the spirit, if not within the letter, of the statute (*q*).

Grant to personal representative of legatee under 38 Geo. 3, c. 87.

A similar grant was made to the father and guardian of

Grant to father who

(*o*) *Hammond, In goods of* (1881), 6 P. D. 104; 50 L. J. P. 70; 44 L. T. 649.

(*p*) *Grant, In goods of* (1876), 1 P. D. 435; 45 L. J. P. 88.

(*q*) *Collier, In goods of* (1862), 2 S. & T. 444; 31 L. J. P. 63; 5 L. T. 849.

was also guardian to infants.

infant legatees (*r*); and to the nominees of the assignees of the residuary legatee (*s*).

38 Geo. 3, c. 87, s. 1.

Meaning of "*at the expiration of twelve months.*"

The words "at the expiration of twelve months from the death of the testator," in sect. 1 of 38 Geo. 3, c. 87, when compared with the words given in the form of affidavit in the second section, and of the grant of administration in the third, have been held to mean *at or after* the expiration of that period (*t*).

Applicant residuary legatee whose interest undetermined.

Where the applicant is residuary legatee, whose interest is undetermined, the grant will be made under 38 Geo. 3, c. 87, but where a particular sum is set aside for and actually payable to the applicant, the grant can be made under 21 & 22 Vict. c. 95, s. 18 (*u*).

Distinction between ordinary and statutory jurisdiction of Probate Division in making grants *durante absentiâ*.

"When the Probate Court, in the exercise of its ordinary jurisdiction, grants administration during the absence of an executor or next of kin before probate or administration taken out by him, such administration is at an end the moment he returns. But under the statute of 38 Geo. III., it was held that the administrator was not appointed for a limited period, but for a limited purpose, viz., to become and be made party to a bill or bills in equity . . . . . The suit so instituted was not, therefore, to fall to the ground, and be at an end, by the return of the executor (*x*).

Effect of Judicature Acts on

"But now, by reason of 21 & 22 Vict. c. 95, s. 18, the purpose would seem no longer so limited and the provisions of the Judicature Acts and rules prevent an action in any case falling to the ground. The Court of Probate Act, 1857, sect. 75, however, enacts that 'after any grant of administration, no person shall have power to sue or prosecute any suit or otherwise act as executor of the

(*r*) *Hampson, In goods of* (1866), L. R. 1 P. & D. 1; 35 L. J. P. 1.

(*s*) *Campion, In goods of*, (1900) P. 13; 69 L. J. P. 19; 81 L. T. 790,

(*t*) *Ruddy, In goods of* (1872), L. R. 2 P. & D. 330; 41 L. J. P. 63; 25 L. T. 950.

(*u*) *Ibid.*

(*x*) Wms. on Exors. 10th ed. p. 407.

deceased as to the . . . . . estate comprised in or affected by such grant . . . . . until such administration shall have been recalled or revoked'" (*y*); but it is otherwise if the grant be made under 38 Geo. 3, c. 87.

grants *durante absentiâ*.

Grants *durante absentiâ* to attorneys of executors or parties entitled to administration are not revoked, but are pronounced to have ceased and expired on the application of the executor or party entitled for probate or administration, and the usual affidavit that no suits were pending. In an old case, the Court declared that for the future such grants should be for the use and benefit of and until the executor (or party entitled to the administration) should apply for and obtain probate or administration (*z*). And the power of such an administrator entirely determines on the death of the executor whom he represents as his attorney (*a*).

Determination of grant.

Power of administrator *durante absentiâ* determines on return of executor.

Where the only person entitled to the estate was resident in Australia, and a legal representative was wanted immediately for the preservation of the property, administration for the use and benefit of the person so entitled was under sect. 73 made to his father-in-law (*b*).

Representative wanted immediately.

The Court cannot pass over an executor by reason of his bad character only; he must also be resident out of the United Kingdom at the time of the death of the testator. In that case it makes a grant to some other person, with such limitations as it may think fit (*c*).

Court cannot pass over executor by reason of bad character only; must be out of country.

A minor was sole legatee under her father's will. Of two executors one predeceased the testator, and the other was, at the time of the testator's death, in Brazil, and his return was uncertain. The next of kin of the minor had either renounced or were out of the country. The Court,

(*y*) Wms. on Exors. 10th ed. p. 407, note (*h*).

(*z*) *Cassidy, In goods of* (1831), 4 Hagg. 360.

(*a*) *Webb* v. *Kirby* (1857), 7 De G. M. & G. 381; 26 L. J. Ch. 145.

(*b*) *Jones, In goods of* (1858), 1 S. & T. 13; 27 L. J. P. 17.

(*c*) *Samson, In goods of* (1873), L. R. 3 P. & D. 48; 42 L. J. P. 59; 28 L. T. 478.

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 73.

under 20 & 21 Vict. c. 77, s. 73, made a grant of administration with the will annexed to the paternal aunt of the minor, whom she had elected as her testamentary guardian (*d*).

Other temporary administrations.

There are several kinds of temporary and limited administrations granted both with the will annexed and in cases of complete intestacy (*e*).

Administration limited during lunacy of executor or administrator.

If the executor be disabled from acting, as if he becomes lunatic, or incapable of legal acts, then, on the principle of necessity, there shall be a grant of temporary administration with the will annexed. Where a sole executor or administrator becomes a lunatic, it is the ordinary practice of the Court to make a limited grant to his committee for his use and benefit during his lunacy. By the consent, given or implied, of the committee of the lunatic, or without any consent if there be no committee, administration with the will annexed may be committed to a residuary legatee during the lunacy of the executor for the use and benefit of the lunatic.

It was also the practice of the Ecclesiastical Court to grant administration for the use and benefit of a lunatic, though the person alleged to be so had not been found so by inquisition (*f*).

Grants to executors of sister of lunatic.

Administration with the will annexed *de bonis non* was granted to the executors of a sister, the administratrix deceased, for the use and benefit of a surviving sister during her imbecility (*g*).

Committee of

Where the widow of a deceased intestate is lunatic, her committee is entitled to the grant preferably to the next

(*d*) *Batterbee, In goods of* (1889), 14 P. D. 39; 58 L. J. P. 38; 60 L. T. 838. See also the following more recent cases: — *Taylor, In goods of*, (1892) P. 90; 61 L. J. P. 93; 66 L. T. 266; *Crawshay, In goods of*, (1893) P. 108; 62 L. J. P. 91; 68 L. T. 260.

(*e*) See Wms. on Exors. 10th ed. pp. 408—419.

(*f*) *Ibid.* 410, citing *Hills* v. *Mills* (1686), 1 Salk. 36; Toller, 99; *Phillips, In goods of* (1825), 2 Add. 336, n. b; *Milnes, In goods of* (1826), 3 Add. 55.

(*g*) *Southmead, In goods of* (1841), 3 Curt. 28.

of kin, in like manner as the widow herself would be, unless good cause to the contrary is shown (*h*).

Lunatic widow preferred to next of kin.

Where the lunatic has not been found so by inquisition the Court requires affidavits, stating the fact of lunacy, and that no inquisition has been had, and no committee appointed: the Court will then grant administration to the next of kin of the lunatic for the use and benefit of the lunatic pending the lunacy (*i*).

No committee.

Where an administrator became insane and no committee was appointed, but a person had been appointed under sect. 116 of the Lunacy Act, 1890 (53 & 54 Vict. c. 5), with powers not of a general nature, but relating only to certain specified property of the lunatic, the Court made a grant to another of the next of kin for the use of the lunatic administrator, limited to the period of his lunacy (*k*).

"Until the year 1824, no case of an application to the Court to supply a defect in the legal representation of the party deceased, occasioned by the lunacy of one of several administrators, is believed to have occurred" (*l*).

Where one of several administrators becomes lunatic.

In that year, where one of three joint administrators became lunatic, letters of administration were granted to the two sane administrators alone (*m*).

One of several joint administrators becoming lunatic.

Where the sole next of kin of an intestate was a lunatic, her committee having renounced, a stranger in blood applied for a grant of administration. The Court ordered

Grant to stranger in blood.

(*h*) *Alford* v. *Alford* (1857), 3 Jur. N. S. 390; Dea. & Sw. 322.

(*i*) See Wms. on Exors. 10th ed. p. 410, citing *Evelyn, Ex parte* (1833), 2 Mylne & K. 4; *Evans* v. *Tyler* (1852), 2 Robert. 134; S. C., 7 Notes of Cas. 305, 306; *Joseph, In goods of* (1836), 1 Curt. 907; *Penny, In goods of* (1845), 4 Notes of Cas. 659; *Binckes, In goods of* (1836), 1 Curt. 286.

(*k*) *Cooke, In goods of*, (1895) P. 68; 64 L. J. P. 35; 72 L. T. 121.

(*l*) Wms. on Exors. 10th ed. 412.

(*m*) *Phillips, In goods of* (1824), 2 Add. 336 n., and similar grants where one of two or more executors or administrators had become lunatics were also made in the following cases:—*Marshall, In goods of* (1836), 1 Curt. 297; *Newton, In goods of* (1842), 3 Curt. 428.

Administration during lunacy of executor or administrator. Court of Probate Act, 1857, s. 73.

the grant to be made, the master in lunacy and the next of kin approving of the application (*o*).

Grants under sect. 73 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), are also under special circumstances made during lunacy, to clerks of the guardians and others, for the benefit of lunatics.

Where one of several executors who have taken probate becomes incapable, the former grant will be revoked on motion, and a fresh grant issued to the remaining executors, with power reserved to the executor who has become incapable to come in and prove if and when again capable (*p*).

Administration limited to a particular part of estate, &c.

There may also be a grant limited to certain specific effects of the deceased, and the general administration may be committed to a different person, but this sort of grant is entirely exceptional (*q*).

Where a party applying for a grant has no direct interest in the estate of the deceased, but only as assignee of part of it, the grant must be limited to that particular part (*r*).

The Court granted administration with the will annexed to a legatee of all property held by the deceased upon any trust, limited to such trust property, the executor and next of kin having renounced probate and administration, and the deceased having died insolvent (*s*).

(*o*) *Hastings, In goods o"* (1878), 4 P. D. 73; 47 L. J. P. 30; 39 L. T. 45.

(*p*) *Shaw, In goods of*, (1905) P. 92; 74 L. J. P. 39; 92 L. T. 427. See also the following recent cases of grants during lunacy:—*Moore, In goods of*, (1892) P. 145; 61 L. J. P. 119; *Atherton, In goods of*, (1892) P. 104; 61 L. J. P. 134; 66 L. T. 627; *Ponsonby, In goods of*, (1895) P. 287; 64 L. J. P. 119; *Hockin, In goods of* (1895), 73 L. T. 316; *Goldschmidt, In goods of* (1898), 78 L. T. 763.

(*q*) *Watts, In goods of* (1860), 1 S. & T. 538; 29 L. J. P. 108; *Somerset, In goods of* (1838), L. R. 1 P. & D. 350. See also *Watson, In goods of* (1858), 1 S. & T. 110; 27 L. J. P. 7; *Baldwin, In goods of*, (1903) P. 61; 72 L. J. P. 23; 88 L. T. 565.

(*r*) *Dodgson, In goods of* (1859), 1 S. & T. 259; 28 L. J. P. 116.

(*s*) *Prothero, In goods of* (1875), L. R. 3 P. & D. 209; 44 L. J. P.

Note to Lines 7 to 9 on Page 206.

The usual practice is to obtain a Registrar's order through the Notation Department.

[*To face p.* 206.

Administration with the will annexed was granted to the joint nominees of two charitable institutions to which legacies, expectant on life interests, had been bequeathed, but limited to a fund appropriated for the payment of legacies, the parties entitled to a general grant having been cited and not appearing (*t*).

Administration limited to particular part of estate, &c.

"An executor may be appointed with limitations as to the time when he may begin his office, as where a man is appointed to be executor at the expiration of five years from the death of the testator.

Executor appointed with limitations as to time.

"So the testator may appoint the executor of A. to be his executor, and then, if he die before A., he has no executor till A. die.

"In these cases, if the testator does not appoint a person to act before the period limited for the commencement of the office, the Court must commit administration limited until there be an executor. . . . .

"So it may be necessary to decree a limited administration till the will of the deceased can be produced in order to be admitted to probate." (*u*).

Till will be found.

Where a will, proved to have been in existence after the testator's death, is accidentally lost, and the contents unknown, the Court will grant administration limited until the will be found and brought into the Registry (*x*).

"Two administrations may well subsist together when there is no executor; but it should be observed that, regularly, no administration of any sort can be granted when there is an executor appointed; for he is *universi juris hæres* to his testator" (*y*).

If there is an executor there can be no administrator.

8; 31 L. T. 551. See also *Rugge Price, In goods of* (1892), 67 L. T. 503; *Butler, In goods of*, (1897) P. 9; 67 L. J. P. 15; 77 L. T. 376.

(*t*) *Biou, In goods of* (1843), 3 Curt. 739; *Pegg* v. *Chamberlain* (1860), 1 S. & T. 528; 2 L. T. 25; *Ratcliffe, In goods of*, (1899) P. 110; 68 L. J. P. 47; 80 L. T. 170.

(*u*) Wms. on Exors. 10th ed. p. 409, citing *Metcalfe, In goods of* (1823), 1 Add. 343.

(*x*) See *Campbell, In goods of* (1730), 2 Hagg. 255; *Wright, In goods of*, (1893) P. 21; 62 L. J. P. 31; 68 L. T. 25.

(*y*) Wms. on Exors. 10th ed. p. 413.

Grants limited to substantiate proceedings in Chancery.

A grant of administration may also be made limited to commencing substantiating proceedings in Chancery, &c. (*z*). But the appointment of an administrator is now in many cases unnecessary; for by R. S. C. Ord. XVI. r. 46, the Court may appoint some person to represent the estate of the deceased or proceed in the absence of any such person (*a*).

Limited grant to father of married woman in spite of husband's opposition.

Where a husband agreed by deed of separation, that if his wife died intestate, her next of kin should be entitled to her property, and she died intestate, the Court made a grant, in spite of the opposition of the husband, to her father, limited to certain separate estate that she became possessed of by virtue of the deed of separation (*b*).

Married Women's Property Act, 1882.

The limitation inserted before the Married Women's Property Act, 1882 (*i.e.*, to such personal estate as she had power to dispose of by will), is no longer required, and the Court now makes a general grant (*c*).

Administration limited to effects of deceased in particular place.

An administration limited to the effects of the deceased in one country or place may be committed to one administrator, and an administration limited to those in another country or place to another (*d*).

Grants of administration *ad colligendum bona defuncti.*

As has been already seen, where there are no next of kin, creditors, or other person desirous for the administration, the Court has a discretionary power to grant *administration ad colligendum bona defuncti* (*e*).

Made where

The above grant of administration is had recourse to by

(*z*) Wms. on Exors. 10th ed. p. 413, citing *Woolley* v. *Green* (1820), 3 Phill. 314; *Maclean* v. *Dawson* (1859), 1 S. & T. 425; *Dodgson, In goods of, supra*, note (*r*); *Burdon* v. *Morgan* (1872), L. R. 2 P. & D. 371; 41 L. J. P. 26; 26 L. T. 405.

(*a*) See Wms. on Exors. 10th ed. p. 1547.

(*b*) *Allen* v. *Humphrys* (1883), 8 P. D. 16; 52 L. J. P. 24; 48 L. T. 125. See also *Moore, In goods of*, (1891) P. 299; 60 L. J. P. 98.

(*c*) *Price, In goods of* (1887), 12 P. D. 137; 56 L. J. P. 72; 57 L. T. 497.

(*d*) *Mann, In goods of*, (1891) P. 293; 60 L. J. P. 95; *Tamplin, In goods of*, (1894) P. 39; 63 L. J. P. 75.

(*e*) See Wms. on Exors. 10th ed. pp. 354, 355.

the Court generally where there is danger to the estate by reason of the same being of a perishable or precarious nature. danger to estate.

Where a sole next of kin refused to take administration, the Court decreed letters *ad colligendum bona defuncti*, limited according to the special circumstances of the case (*f*).

Where it is for the benefit of the unknown or absent next of kin the Court will direct an administrator *ad colligenda bona* to dispose of the property, or of any portion of it by sale (*g*).

So, in a subsequent case, the Court, under special circumstances, made a grant to a creditor *ad colligendum bona*, limited to collect the personal estate of the deceased, to give receipts for debts, and to renew the lease of his business premises, which would expire before a general grant could be made. But the Court refused to include in the grant a power to dispose of the lease and goodwill of the business or a power to carry it on (*h*). To collect debts, give receipts, and renew lease, but not to sell goodwill of business or carry it on.

In cases of limited administrations, the parties entitled to the general grant may take out what is called a *cæterorum* representation, enabling them to deal with the rest of the estate (*i*). *Cæterorum* representation.

(*f*) *Radnall, In goods of* (1824), 2 Add. 232.

(*g*) *Schwerdtfeger, In goods of* (1876), 1 P. D. 424; 45 L. J. P. 46; 34 L. T. 72. See also *Roberts, In goods of*, (1898) P. 149; 67 L. J. P. 71; 78 L. T. 390.

(*h*) *Clarkington, In goods of* (1862), 2 S. & T. 380; 7 L. T. 218; *Ashley, In goods of* (1890), 15 P. D. 120; 59 L. J. P. 72. See also *Wyckhoff, In goods of* (1863), 3 S. & T. 29; 32 L. J. P. 214; 7 L. T. 565, where a similar grant was made under sect. 73 of the Court of Probate Act, 1857. See also *Malkin, In goods of* (1894), 70 L. T. 811; *Bolton, In goods of*, (1899) P. 63; 68 L. J. P. 63; 80 L. T. 631.

(*i*) Wms. on Exors. 10th ed. p. 417, citing *Harris* v. *Milburn* (1829), 2 Hagg. 62; and *Currey, In goods of* (1849), 5 Notes of Cas. 54, where the Court declined to make *cæterorum* representation. See also *Fenton, In goods of* (1826), 3 Add. 35; *Skeffington* v. *White* (1828), 1 Hagg. 699; *Steadman, In goods of* (1729), 2 Hagg. 59; and, on the subject of *cæterorum* grants generally, Wms. on Exors. 10th ed. pp. 417—419.

Grant save and except.

A grant "*save and except*" is the reverse of a *cæterorum* grant—it precedes instead of following the particular or limited grant.

Supplemental or *cessate* grants.

Where the representation is limited in point of *time*, it is obvious that, as the whole representation is granted, although only for a time, no other grant can be made until such time has elapsed. For instance, a grant made *durante absentiâ*, or *minore ætate*, is a grant of the whole representation, expiring on the return or coming of age of the party entitled. Then, and not till then, can the party entitled apply for a general and regular grant. This is called a supplemental or *cessate* grant. Although this grant is only required when the estate of the deceased has not been fully administered, yet a distinction is taken between a supplemental or *cessate* grant and a grant *de bonis;* because, in the latter case, the grant was originally of the entire representation; whereas, in the former, the original grant was determinable on the effluxion of time, or on the happening of a particular event. A *cessate* grant is a renewal of the entire original grant, while a grant *de bonis* is only a grant of so much as is unadministered.

CHAPTER XIX.

COSTS (*a*).

Cases on costs.

THE following chapter contains the principal decisions, showing the principles on which costs are dealt with in the Probate Division.

The practice of the Division with respect to costs is fully treated of, *post*, Part II.

Costs in discretion of judge.

The question of costs has always been in the discretion of the judge, both in the Prerogative Court and in the Probate Court.

Married woman having separate estate condemned in costs.

Even before the passing of the Married Women's Property Act, 1882, it was held in a probate action that the Court had power to condemn in costs a married woman having general separate estate (*b*).

As a general rule, an executor who propounds a will in solemn form is entitled to take his costs out of the estate of the deceased.

Nude executor propounding will without cause condemned in costs.

At the same time, it has been held that an executor taking no interest under the will who, without reasonable grounds, propounds a testamentary paper, is liable to be condemned in costs. Therefore, if he has any doubt as to the validity of a testamentary paper, he should, before propounding it, take security for his costs from the person interested (*c*).

Executrix losing will.

Where an executrix, through her own negligence, had lost the will, and established a draft of it in solemn form

(*a*) See Wms. on Exors. 10th ed. pp. 247—249, 285—290.

(*b*) *Morris* v. *Freeman* (1878), 3 P. D. 65; 47 L. J. P. 79; 39 L. T. 125.

(*c*) *Rennie* v. *Massey* (1866), L. R. 1 P. & D. 118; 35 L. J. P. 124; 14 L. T. 188.

Cases on costs.

of law, she was allowed such costs out of the estate as she would have incurred in proving the original will in solemn form, and was ordered to pay the costs of the defendants (*d*).

Party destroying will.

In decreeing probate of the contents of a destroyed will, the Court condemned in costs a party who had been cited but had not appeared (*e*); so, too, a person who has not been cited nor made himself a party to the suit, but who has entered a caveat, may be condemned in costs (*f*).

Costs of heir-at-law.

An heir-at-law who intervenes in a suit and opposes a will, not being cited, is entitled to his costs if the will is pronounced against (*g*); and the same is the case where he is made a party by order of the Court (*h*).

In a suit as to the construction of a will in which the heir-at-law is a necessary party, and is made a party by order of the Court, he will be allowed the costs both of proving his heirship, and also of the general suit between the parties, even though he is ultimately unsuccessful; and an heir-at-law who intervenes in a suit and opposes the will, though not cited, is entitled to his costs if the will is pronounced against.

Costs of interveners sometimes allowed.

A next of kin who unsuccessfully opposed a will was condemned in the costs of another next of kin whom he had cited to see proceedings, and who had appeared and pleaded, but had taken no further part (*i*).

Executor condemned in costs.

Where an attorney propounded, as executor, a will, purporting to be attested by two of his clerks, and on the morning of the trial his counsel stated that he would consent to a verdict for the defendant; the Court, in the

(*d*) *Burls* v. *Burls* (1867), L. R. 1 P. & D. 472; 36 L. J. P. 125; 16 L. T. 677.

(*e*) *King* v. *Gillard* (1868), L. R. 1 P. & D. 539; 37 L. J. P. 4; 17 L. T. 297.

(*f*) *Ratcliffe* v. *Barnes* (1862), 2 S. & T. 486; 31 L. J. P. 61; 6 L. T. 658.

(*g*) *Rayson* v. *Parton* (1870), L. R. 2 P. & D. 38; 39 L. J. P. 20; 21 L. T. 647. See also *Fyson* v. *Westrope* (1860), 1 S. & T. 279; 29 L. J. P. 139.

(*h*) *Singleton* v. *Tomlinson* (1878), 3 App. Cas. 404; 38 L. T. 653.

(*i*) *Cross* v. *Cross* (1864), 3 S. & T. 300; 33 L. J. P. 49; 10 L. T. 70.

absence of a satisfactory explanation of the circumstances, condemned him in the costs of the suit (*k*).

Cases on costs.

A next of kin who unsuccessfully opposed a will on the ground of incapacity was not condemned in costs, where the opposition was induced by a statement of the medical attendant of the deceased, who had attested the will, and read it over to him (*l*).

Charge of incapacity induced by statement of medical man.

Where it was alleged that a second will revoked a first, an executor who unsuccessfully resisted revocation of a probate of the first will that had been granted him in common form was condemned in costs (*m*).

Two wills; executor resisting revocation of probate condemned in costs.

Where the Court appointed the official solicitor guardian *ad litem* to an infant, because it appeared that the proper guardian would not act, it ordered that such official solicitor's costs should be part of the costs of the plaintiff who was the executor propounding the will (*n*).

Official solicitor guardian *ad litem*.

In a testamentary suit, being condemned in costs includes all the charges of an administrator *pendente lite* (*o*), and, in case of appeal, his costs will be allowed from the date of his appointment until the dismissal of the appeal (*p*).

Condemnation in costs includes costs of administrator *pendente lite*.

A next of kin unsuccessfully opposed a will on the ground of undue execution and incapacity, and called witnesses in support of his plea. The Court found for the will, but refused to condemn the next of kin in costs, undue influence not having been pleaded (*q*); and the Court refused to condemn a next of kin in costs who had unsuc-

Pleas of undue execution and incapacity.

Of undue influence and fraud.

Will made in favour of

(*k*) *Richards* v. *Humphreys* (1860), 29 L. J. P. 137. See also *Clarkson* v. *Waterhouse* (1860), 2 S. & T. 378; 29 L. J. P. 136; 1 L. T. 415, where the executor knew that the will had not been well executed; and *Dodge* v. *Meech* (1829), 1 Hagg. 612, where an inofficious instrument was propounded by a person materially benefited.

(*l*) *Tippett* v. *Tippett* (1866), L. R. 1 P. & D. 54; 35 L. J. P. 41.

(*m*) *Cottrell* v. *Cottrell* (1872), L. R. 2 P. & D. 397; 41 L. J. P. 57; 26 L. T. 527.

(*n*) *White* v. *Duvernay*, (1891) P. 290; 60 L. J. P. 89.

(*o*) *Fisher* v. *Fisher* (1879), 4 P. D. 231; 48 L. J. P. 69.

(*p*) *Taylor* v. *Taylor* (1881), 6 P. D. 29; 50 L. J. P. 45.

(*q*) *Summerell* v. *Clements* (1863), 3 S. & T. 35; 32 L. J. P. 33; 8 L. T. 172.

widow at her instigation.

cessfully opposed a will on the ground of incapacity and undue influence, although there was no direct evidence of undue influence, when it appeared that the will was made in favour of the testator's widow and at her instigation by answer of aye and no, and at a time when his capacity might be fairly questioned (*r*).

Where judge of assize would have been satisfied with verdict either way.

Where the judge of assize was satisfied with a verdict for the plaintiff establishing a will, but would not have been dissatisfied with a contrary verdict, the Court refused to condemn the defendant in costs (*s*).

Attesting witnesses giving opposite evidence as to execution.

Where one of the attesting witnesses contradicted the other, a jury having found for the will, the Court refused to make any order as to costs (*t*).

An executor of a former will has the same right as a next of kin to put an executor of a subsequent will upon proof in solemn form and to interrogate his witnesses without being liable to pay costs (*u*).

Order XXI. r. 18. Notice to cross-examine only; amended Aug. 1898;

By Rule 41 of the Probate Court Rules (Contentious Business), and by Order XXI. r. 18, of the Rules of the Supreme Court, the party opposing a will could, up to the latter part of 1898, entirely protect himself from all liability as to costs by giving notice that he only insisted on the will being proved in solemn form of law, and only intended to cross-examine the witnesses called in support of the will. But in August, 1898, this rule was amended by adding the words "*unless the judge shall be of opinion that there was no ground for opposing the will*" (*x*). Therefore all the earlier decisions on costs under this rule are now liable to considerable modification.

(*r*) *Smith* v. *Smith* (1867), L. R. 1 P. & D. 239; 36 L. J. P. 13; 15 L. T. 192.

(*s*) *Bramley* v. *Bramley* (1864), 3 S. & T. 430; 33 L. J. P. 111, n.

(*t*) *Ferrey* v. *King* (1862), 3 S. & T. 51; 31 L. J. P. 20; 7 L. T. 219.

(*u*) *Boston* v. *Fox* (1860), 4 S. & T. 199; 29 L. J. P. 68. See also *Seaton* v. *Sturch* (1860), 29 L. J. P. 195.

(*x*) The practice under this rule is fully dealt with *post*, Pt. II.

But this privilege only extends to executors, next of kin, an executor of a former will, and, since the passing of the Land Transfer Act, 1897, the heir-at-law; but not to legatees (*y*). Who may give.

A party who pleads that the deceased did not know and approve of the contents of his will may upon that question cross-examine the witnesses produced by the plaintiff, without being liable to costs, if he has given notice under the rule (*z*). Plea of want of knowledge and approval.

But it must be remembered that this rule does not apply where the defendant, by his pleading, throws any part of the burden of proof upon himself. Rule does not apply where onus on defendant.

Therefore a party pleading undue influence or fraud does not exempt himself from liability for costs by giving notice under the rule (*a*). Plea of undue influence or fraud.

But it would seem that the next of kin who vexatiously called in probate of a will granted in common form might always have been condemned in costs, although he has given notice under the rule (*b*). Next of kin vexatiously calling in probate.

In 1892 it was held that where a party opposing a will had given notice under the rule, the Court had no power to condemn him in costs, such power only existing where the party giving notice has taken proceedings to call in probate (*c*). Recent decisions as to costs. 1892.

The effect of this rule as amended is that, whether he has asked for a jury or not, a defendant who duly gives notice under the rule is not to be liable to pay the costs of the 1899.

(*y*) *Hockley* v. *Wyatt* (1882), 7 P. D. 239; 51 L. J. P. 92; 47 L. T. 354.

(*z*) *Cleare* v. *Cleare* (1869), L. R. 1 P. & D. 655; 38 L. J. P. 81; 20 L. T. 499.

(*a*) *Harrington* v. *Bowyer* (1872), L. R. 2 P. & D. 264; 41 L. J. P. 17; 25 L. T. 385. See also *Ireland* v. *Rendall* (1866), L. R. 1 P. & D. 194.

(*b*) *Beale* v. *Beale* (1874), L. R. 3 P. & D. 179; 43 L. J. P. 70; 30 L. T. 330.

(*c*) *Leigh* v. *Green*, (1892) P. 17; 61 L. J. P. 66 (*Beale* v. *Beale*, *supra*, note (*b*), distinguished). See also *Tappenden* v. *Lucas* (1892), 65 L. T. 684.

Recent decisions as to costs. 1904.

other side, unless the judge shall be of opinion that there was no reasonable ground for opposing the will (*d*).

In construing the above rule, the principles which guided the old Ecclesiastical Courts, and afterwards the Probate Court, ought to be considered, and, following out those principles, a distinction is to be drawn between a party who seeks to call in and obtain revocation of probate, and a party who enters a caveat and takes the ordinary steps in opposing a will. The Court therefore held that a notice given under the rule by a plaintiff who claimed revocation of probate was bad (*e*).

Notice under Rule 41 must be given with defence.

The notice, under Rule 41, must be given with the defence; if served afterwards, it has been held not to be in compliance with the terms of the rule, and that the party could not claim under it any exemption as to costs (*f*).

Costs out of the estate.

The Court allowed costs out of the estate to the unsuccessful opponent of a will, although he had pleaded undue influence and fraud, being of the opinion that the mode in which the testator had executed the will, and the conduct of the persons beneficially interested under it, had reasonably excited doubt and suspicion, and justified those pleas (*g*).

(*d*) *Davies* v. *Jones*, (1899) P. 161; 68 L. J. P. 69; 80 L. T. 631, in which case the Court held there was reasonable ground for opposing the will; but in *Spicer* v. *Spicer*, (1899) P. 38; 68 L. J. P. 19; 79 L. T. 707, the Court held that the defendants had opposed the will without reasonable ground, and condemned them in costs under the amended rule. See also *Perry* v. *Dixon* (1899), 80 L. T. 297.

(*e*) *Tomalin* v. *Smart*, (1904) P. 141; 73 L. J. P. 37; 90 L. T. 171; 20 Times L. R. 197; *Beale* v. *Beale*, *supra*, note (*b*), approved,

(*f*) *Bone* v. *Whittle* (1867), L. R. 1 P. & D. 249; 36 L. J. P. 15; 15 L. T. 330. See also *Leeman* v. *George* (1868), L. R. 1 P. & D. 542; 37 L. J. P. 13; 17 L. T. 518.

(*g*) *Orton* v. *Smith* (1873), L. R. 3 P. & D. 23; 42 L. J. P. 23; 28 L. T. 112. See also *Davies* v. *Gregory* (1873), L. R. 3 P. & D. 28; 42 L. J. P. 33; 28 L. T. 239; *Jenner* v. *Fjinch* (1881), 5 P. D. 106; 49 L. J. P. 25; 42 L. T. 327; *Roe* v. *Nix*, (1893) P. 55; 62 L. J. P. 36; 68 L. T. 26; *Cousins* v. *Tubb* (1892), 65 L. T. 716;

Recent decisions as to costs.

As a general rule the parties unsuccessfully disputing a will in a probate action, on the ground, amongst others, of undue influence will be condemned in costs (*h*). 1897.

Where a principal beneficiary took instructions himself and caused a will to be prepared by a solicitor upon those instructions, but the solicitor did not see the testator, the Court refused to condemn the party opposing probate of the will in costs (*i*). 1902.

In a case where a defendant had pleaded undue influence and fraud unsuccessfully, the Court nevertheless, following the case of *Orton* v. *Smith* (*supra*, *note* (*g*)), ordered that the costs of the defendant be allowed out of the estate, as between party and party, after the plaintiff should have first taken her costs as between solicitor and client, out of the estate (*k*). 1903.

The Court ordered the costs of both plaintiff and defendant to be charged on and paid out of the *corpus* of devised estate bequeathed to successive life tenants (one of them being the defendant in the action) and subject thereto to the residuary legatees of the testator, one of whom was the plaintiff (*l*). 1905.

Party entitled in distribution.

A person entitled in distribution, who merely puts the executors to strict proof of a will in solemn form, if he has reasonable ground for doing so, will generally be allowed his costs out of the estate. But not if it appears that his object in calling for such proof was not simply to obtain the judgment of the Court of Probate as to the validity of the will, but to elicit evidence which might be used by him in a suit instituted in another Court (*m*).

Notice of intention to cross-examine only.

Shortman v. *Shortman* (1893), 67 L. T. 717; *Williams* v. *Coker* (1893), 67 L. T. 626.

(*h*) *Browning* v. *Mostyn* (1897), 66 L. J. P. 37. See also *Page* v. *Williamson* (1902), 87 L. T. 146.

(*i*) *Aylwin* v. *Aylwin*, (1902) P. 203; 71 L. J. P. 130; 87 L. T. 142.

(*k*) *Wilson* v. *Bassil*, (1903) P. 239; 72 L. J. P. 89.

(*l*) *Dean* v. *Bulmer*, (1905) P. 1; 74 L. J. P. 12; 92 L. T. 426.

(*m*) *Swinfen* v. *Swinfen* (1860), 1 S. & T. 283; 29 L. J. P. 153.

Legatee proving will instead of executor entitled to costs.

A legatee who has propounded a codicil and succeeded is entitled to the same costs as an executor under similar circumstances.

Thus, where the plaintiffs, who were legatees, propounded a codicil, the defendant (who was the executor), having proved the will only, the Court, having pronounced for the will, condemned the defendant in costs, and gave the plaintiffs also, out of the estate, such sum, *nomine expensarum*, as would cover the additional expenses (*n*).

Costs out of the estate.

The principle on which costs are given out of the estate is, that the party was led into the suit by the state of the testamentary papers (*o*).

State in which papers left by deceased.

Thus, when litigation is rendered necessary by the state in which the deceased left his papers, the costs of it, though unsuccessful, will be allowed out of the estate (*p*).

Legatee acting in interest of infant.

Where a legatee acting in the interest of an infant residuary legatee succeeded in establishing a will under which she herself took only a trifling legacy, the executor having refused to propound the will, the Court ordered her costs to be paid out of the estate (*q*).

Litigation arising through fault of testator.

If the cause of litigation takes its origin in the fault of the testator, or of those interested in the residue (*r*); or if a question of law raised by the party opposing was so doubtful that he was entitled to have it decided by a competent tribunal (*s*); the costs will be allowed out of the estate. If there be sufficient and probable ground, looking to the knowledge and means of knowledge of the opposing party, to question either the execution of the will or the capacity of the testator, or to put forward a charge of un-

(*n*) *Wilkinson* v. *Corfield* (1881), 6 P. D. 27; 50 L. J. P. 44.

(*o*) *Hillam* v. *Walker* (1827), 1 Hagg. 74. See also Wms. on Exors. 10th ed. p. 288, note (*y*).

(*p*) *Thorncroft* v. *Lashmar* (1862), 2 S. & T. 484; 31 L. J. P. 150; 6 L. T. 476.

(*q*) *Bewsher* v. *Williams* (1863), 3 S. & T. 62; 8 L. T. 290, n.

(*r*) *Mitchell* v. *Gard* (1864), 3 S. & T. 275; 33 L. J. P. 7; 9 L. T. 491.

(*s*) *Robins* v. *Dolphin* (1860), 1 S. & T. 518; 29 L. J. P. 138.

Costs out of estate.

due influence or fraud, the losing party may properly be relieved from the costs of his successful opponent (*t*).

In Ecclesiastical Courts.

In the Ecclesiastical Courts a party successfully propounding a will, thus discharging the duty of the executor, was entitled to costs out of the estate (*u*).

No personal estate, costs out of realty.

Where a testatrix died possessed of no personal estate, and the litigation in relation to her will was caused by her own fault, the Court gave the unsuccessful party costs out of the estate, and ordered them to be paid rateably out of the realty (*x*).

Will set aside on ground of insanity, costs out of estate nevertheless.

Where executors propounded a will in the *bonâ fide* belief that the deceased was of sound mind and had good reason for such belief, the Court allowed them their costs out of the estate, although the will was pronounced against on the ground of insanity (*y*).

Security for costs.

The rule of the Common Law Courts as to the occasions on which security for costs should be given was early adopted by the Court of Probate, *e.g.*, security for costs was required of a plaintiff in a suit, when resident without the jurisdiction of the Court, but was not required of a person who was the defendant, or in a similar position (*z*).

Before the institution of the Court of Probate, the Court

(*t*) *Mitchell* v. *Gard*, *supra*, note (*r*). See Wms. on Exors. 10th ed. pp. 287 *et seq.*

(*u*) *Sutton* v. *Drax* (1815), 2 Phill. 323; *Williams* v. *Goude* (1831), 1 Hagg. 577.

(*x*) *Smith* v. *Hopkinson* (1879), 4 P. D. 84; 47 L. J. P. 40; 39 L. T. 124.

(*y*) *Boughton* v. *Knight* (1873), L. R. 3 P. & D. 64; 42 L. J. P. 41; 28 L. T. 562. See also the following cases on costs out of the estate:—*Shaw* v. *Marshall* (1858), 1 S. & T. 129; *Onslow* v. *Cannon* (1861), 2 S. & T. 136; 30 L. J. P. 165; 4 L. T. 217; *Critchell* v. *Critchell* (1863), 3 S. & T. 41; 32 L. J. P. 108; 8 L. T. 173; *Nash* v. *Yelloly* (1863), 3 S. & T. 59; 8 L. T. 290; *Williams* v. *Henery* (1864), 3 S. & T. 41; 33 L. J. P. 110; *Tichborne* v. *Tichborne* (1869), L. R. 1 P. & D. 730; 38 L. J. P. 55; 20 L. T. 820.

(*z*) *Robson* v. *Robson* (1865), 3 S. & T. 568; 34 L. J. P. 6; 11 L. T. 459; *Crispin* v. *Doglione* (1860), 1 S. & T. 522; 29 L. J. P. 130. And see further as to security for costs, both before and after the institution of the Court of Probate, Wms. on Exors. 10th ed. p. 289.

Security for costs.

in all cases could, upon application made to it, direct security for costs to be given by either or all of the parties. But the Court of Probate was not in the habit of ordering security for costs to be given, except where a Court of common law would have done so.

Foreigner staying in England.

The Probate Division will not order a plaintiff to find security for costs when, though a foreigner, he is staying in England at the time of the application, and there is nothing to lead to the supposition that he is on the point of leaving this country.

M. W. P. Act, 1882. Married women not liable to give security for costs.

Since the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), married women suing as plaintiffs, without their husbands being joined, are not liable to give security for costs (*a*).

Issues found distributively.

When issues are found distributively, the party condemned in costs is not liable for costs of issues found in his favour if separable from the other costs (*b*).

Recent decisions as to costs.

1892.

Where the half-sister of the deceased, in the belief that his widow was dead, took out administration, and it was subsequently shown that the widow was living, the Court recalled the grant with costs against the half-sister (*c*).

1895.

An order of the Probate Division to pay a fixed sum for costs may be enforced by action in the King's Bench Division (*d*).

1896.

Where a will showed signs of insanity on the face of it, the executors propounding it were condemned in costs, although they called evidence to show that they were unaware of the condition of the deceased, and although the plaintiff and her advisers refused to give them any information as to the facts of her case (*e*).

1897.

The Court (on appeal from the registrar) allowed the

(*a*) *Threlfall* v. *Wilson* (1883), 8 P. D. 18; 48 L. T. 238.

(*b*) *Rayson* v. *Parton* (1870), L. R. 2 P. & D. 38; 39 L. J. P. 20; 21 L. T. 647.

(*c*) *Carr*, *In goods of* (1892), 67 L. T. 357.

(*d*) *Norton* v. *Gregory* (1892), 73 L. T. 10.

(*e*) *Rogers* v. *Le Cocq* (1896), 65 L. J. P. 68.

Recent decisions as to costs.

plaintiff in a probate action to amend his pleadings by adding a defendant, after the defendant had appeared and filed his defence; but ordered the plaintiff to pay the costs of the defendant, occasioned by the non-joinder of the other defendant in the first instance (*f*).

1898. Where a witness was examined as to her knowledge of a testamentary paper under the Court of Probate Act, 1857, s. 26 (see *post*, Part II.), and denied all knowledge of it, the Court refused to make any order as to costs until more fully informed as to the facts of the case; but added that the witness might make an immediate application for costs, if the action to prove the will was not proceeded with (*g*).

1902. Executors, who are also residuary legatees, are in the same position as any other party who unsuccessfully propounds a will. Therefore the Court ordered executors, who were in that position, to pay the costs of the defendant, but not those of the parties cited, whose interests were practically identical with those of the defendant (*h*).

(*f*) *Coke* v. *French* (1897), 76 L. T. 163.

(*g*) *Wyatt, In goods of*, (1898) P. 15; 67 L. J. P. 7; 78 L. T. 80.

(*h*) *Twist* v. *Tye*, (1902) P. 92; 71 L. J. P. 47; 86 L. T. 259.

CHAPTER XX.

EVIDENCE (*a*).

THE following are some of the principal reported decisions in the Probate Division on Evidence:

Attesting witness not forthcoming, affidavit eight years old allowed to be used.

In a suit for revocation of probate where it appeared that every effort had been made to find one of the attesting witnesses, but without success, the Court allowed the affidavit made by him eight years before, at the time of proving the will at the district registry, to be admitted as evidence (*b*).

In a recent case where both the attesting witnesses were dead, the Court allowed the handwriting of one of them and of the testatrix to be proved by affidavit (*c*).

The Court will allow affidavits in reply to be read at the hearing of a cause, if it thinks such affidavits are necessary (*d*).

Commission as to knowledge of testamentary paper.

The Court has power to order a commission to issue to examine a person as to his knowledge of a testamentary paper (*e*).

(*a*) See *post*, Pt. II. "Practice." See also Wms. on Exors. 10th ed. pp. 82, 83, 99, 100, 105, 116, 118, 126, 174, 231, 232, 251—257 *et seq.*, 262, 263 *et seq.*, 293—295, 301, 302, 431 *et seq.*, 442 *et seq.*, 1039, note (*q*), 1263, note (*d*).

(*b*) *Gornall* v. *Mason* (1887), 12 P. D. 142; 56 L. J. P. 86; 57 L. T. 601. See also *Drewitt* v. *Drewitt* (1888), 58 L. T. 684; *Cook* v. *Tomlinson*, 24 W. R. 85. For practice as to affidavits, see *post*, Pt. II.

(*c*) *Peverett, In goods of*, (1902) P. 205; 71 L. J. P. 114; 87 L. T. 143.

(*d*) *Cordeux* v. *Trasler* (1865), 4 S. & T. 48; 34 L. J. P. 127.

(*e*) *Banfield* v. *Pickard* (1881), 6 P. D. 33; 50 L. J. P. 72.

When a motion is made for an order for a commission to examine witnesses abroad, the affidavit on which the motion is founded should set out the names of the witnesses whom it is proposed to examine (*f*). Motion for commission; affidavit must set out names of witnesses.

Where the executors, who propounded a will, applied for the examination *de bene esse* of an attesting witness, who was resident in London; the affidavit alleged no physical infirmity, but described him as an "elderly person." The Court allowed the examination, but intimated that if it were proposed at the trial to read the evidence taken under it, strict proof of inability to produce the witness would be required (*g*). Elderly persons.

In order to found an application for the immediate examination of a witness in a pending suit, the affidavit must set out special circumstances. It is not sufficient that it states that the witness is a material witness (*h*). Special circumstances.

A witness is not bound to attend before an examiner without a *subpœna* (*i*).

By German law a British consul is not allowed to administer an oath, and the witness must be sworn before a German judge (*k*).

It has been held that an affidavit sworn before a notary abroad ought not to be admitted, unless it appears on affidavit that there was not at the place where it was sworn a British consul or other officer empowered by 18 & 19 Vict. c. 42, to take affidavits, and that a notary had by the law of such place authority to take affidavits (*l*). Before notary abroad.

A declaration on oath was received instead of an affi-

(*f*) *Ryves* v. *Att.-Gen.* (1866), L. R. 1 P. & D. 23; 35 L. J. P. 6.

(*g*) *McPherson* v. *Parnell* (1871), 40 L. J. P. 30; 24 L. T. 742. See also *Brown* v. *Brown* (1869), L. R. 1 P. & D. 720; 38 L. J. P. 78; 21 L. T. 339.

(*h*) *Andrews* v. *Brooke* (1874), L. R. 3 P. & D. 181; 43 L. J. P. 39; 31 L. T. 162.

(*i*) *Stuart* v. *Balkis Co.* (1884), 5 L. J. Ch. 790; 50 L. T. 479.

(*k*) *Fawcus, In goods of* (1884), 9 P. D. 241; 54 L. J. P. 47.

(*l*) *Bernard, In goods of* (1862), 2 S. & T. 489; 31 L. J. P. 89; 6 L. T. 726. See also *De Salazar, In goods of*, 21 W. R. 776.

Commission to take evidence abroad.

davit, the person making it being resident abroad where an affidavit could not be made (*m*).

In an executor's or administrator's oath and affidavit for Commissioners of Inland Revenue, it is a sufficient description of a widow to describe her as "the lawful widow and relict of the said deceased" (*n*).

Party propounding will must call at least one attesting witness.

A party propounding a will is bound to call one at least of the attesting witnesses, if he can be produced, to prove the due execution, and if such witness fails to prove the due execution he is bound to call the other, although he may know him to be an adverse witness (*o*).

Forgery proved in action in Chancery Division. Parties estopped from denying it in action in Probate Division.

Where two wills were in dispute, and as the result of a compromise a verdict and judgment were taken establishing the earlier will, and subsequently the party setting up the later will discovered that the earlier will was a forgery and obtained a verdict to that effect in the Chancery Division, the Court held that the parties setting up the earlier will were estopped from denying the forgery in a subsequent action in the Probate Division (*p*).

Evidence of foreign law.

Evidence of foreign law in the Probate Division must be supplied by some person who, from his having a professional status as a lawyer or otherwise in the country, the law of which is in question, is considered an expert. But a non-qualified person, although learned in the subject, cannot give evidence of foreign law. So the evidence of an English "certified special pleader" as to foreign law was refused (*q*).

Expert.

(*m*) *Lambert, In goods of* (1866), L. R. 1 P. & D. 138; 35 L. J. P. 64; 14 L. T. 227.

(*n*) *Morgan, In goods of* (1861), 32 L. J. P. 139; *King, In goods of* (1863), 2 S. & T. 621; 32 L. J. P. 14; 7 L. T. 394.

(*o*) *Coles* v. *Coles* (1866), L. R. 1 P. & D. 70; 35 L. J. P. 4; 13 L. T. 608. See also *Forster* v. *Forster* (1864), 33 L. J. P. 113; *Belbin* v. *Skeates* (1858), 1 S. & T. 148; 27 L. J. P. 56; *Owen* v. *Williams* (1863), 4 S. & T. 202; 32 L. J. P. 159; 9 L. T. 86; *Wright* v. *Rogers* (1869), L. R. 1 P. & D. 678; 38 L. J. P. 67; 21 L. T. 156.

(*p*) *Priestman* v. *Thomas* (1884), 9 P. D. 70, 210; 53 L. J. P. 109; 51 L. T. 843.

(*q*) *Bonelli, In goods of* (1876), 1 P. D. 79.

Foreign ambassador or secretary of legation.

The certificate of a foreign ambassador, given under the seal of the embassy, has been accepted as proof of the validity of a foreign testamentary paper (*r*).

Upon an application for administration to the estate of a child, the Court allowed the birth and death of the child to be proved by evidence of declarations by its deceased mother (*s*).

Undue influence pleaded.

Where three plaintiffs propounded a will and undue influence was pleaded against all three of them, the Court held that counsel for the plaintiffs was entitled to open the whole case, and, after calling one of the plaintiffs only, to reserve the evidence of the other two plaintiffs (*t*).

Discovery and inspection. Interrogatories as to sums of money received from testator.

Interrogatories (*u*) for the examination of the defendants, asking them what sums they had received from the testator by way of payment for services, loan, or gift, and whether the universal legatee had since the death of the testator made over any and what part of the property to the other defendants, were ordered to be answered, limiting the answers as to moneys received to any sums paid during the years 1880 to 1883 inclusive (*x*).

The Court gave leave to two of the executors named in a will to interrogate the solicitor of the testator touching a memorandum which the solicitor had stated to the executors had been executed by the testator in reference to his property (*y*).

Inspection of documents in hands of solicitor.

The defendants in an action by the plaintiff propounding a will having applied for inspection of documents, it appeared that the solicitor for the plaintiff had for many years acted as solicitor for the testatrix, whose will was in

(*r*) *Klingemann, In goods of* (1863), 3 S. & T. 18; 32 L. J. P. 16; 8 L. T. 172. See also *Dost Aly Khan, In goods of* (1880), 6 P. D. 6; 49 L. J. P. 78.

(*s*) *Thompson, In goods of* (1887), 12 P. D. 100; 56 L. J. P. 46; 57 L. T. 373.

(*t*) *Fallo* v. *Lovett* (1897), 77 L. T. 220.

(*u*) See, on the practice as to Discovery and Inspection, &c., *post*, Pt. II.

(*x*) *Holloway, In re, Young* v. *Holloway* (1887), 12 P. D. 167; 56 L. J. P. 81; 57 L. T. 515.

(*y*) *Lockwood, In goods of* (1892), 66 L. T. 124.

Discovery and inspection.

dispute, and had in his possession diaries, extracts from diaries, cash ledgers and bankers' cash books, containing entries and memoranda relating to the deceased and her affairs, which documents were the private property of the solicitor.

Inspection of documents in hands of solicitor.

Held by the Court of Appeal that an order could not be made on the plaintiff to produce them for inspection. On the other hand it was held, with respect to letters passing between the plaintiff and her solicitor, that before she could claim them "to be privileged, as communications between herself and her solicitor," it was necessary for her to show that the letters were professional communications of a confidential character (*z*).

Letters to solicitor and counsel.

In a suit for revocation of probate on the ground of the testator having been of unsound mind, and that the will was obtained by undue influence of the defendants, two of whom were executors and the third universal legatee; four anonymous letters having been received after the action began, relating to matters in dispute, two by the plaintiff, one by her solicitor, and the other by her counsel; the Court held that the letters to the plaintiff must be produced, but that the letters to the solicitor and counsel were privileged, for they must be taken to have been sent to them for the purposes of the action by reason of their being the plaintiff's legal advisers in the action (*a*).

Discovery is a power auxiliary to the trial of a question of fact (*b*).

Court has power to order material document to be brought into registry.

The Court of Probate has power to order any document sufficiently described, and shown to be material to the inquiry going on before it, to be brought into the registry; and also to order either party to file additional affidavits of scripts (*c*).

(*z*) *O'Shea* v. *Wood*, (1891) P. 286; 60 L. J. P. 82; 65 L. T. 30.

(*a*) *Young* v. *Holloway* (1887), *supra*, note (*x*).

(*b*) *Hunt* v. *Anderson* (1868), L. R. 1 P. & D. 476; 37 L. J. P. 27; 18 L. T. 33.

(*c*) *Peacock* v. *Lowe* (1867), 36 L. J. P. 91; 16 L. T. 641.

Will not make order where will ought to be propounded.

The Court will not, under 20 & 21 Vict. c. 77 (C. P. Act, 1857), s. 26, order the attendance for examination in open Court of the attesting witnesses to a will merely because they may have declined to give information as to the circumstances attending the execution of the same; the proper course is to propound the will (*d*).

Party brought into Court under sect. 26 may be represented by counsel.

A party having been brought before the Court to be examined as to her knowledge of the testamentary papers of the deceased, counsel was permitted to attend on her behalf, to put questions to her, and also to the other persons who had been required to attend on the same inquiry (*e*).

Subpœna to bring papers into registry.

Where the executors of a testatrix and their solicitors had in their possession certain old wills and other testamentary documents executed by her, as to the contents of which they refused to give any information to her husband's nephew and niece, who believed themselves to be benefited by them; the Court—an application for a subpœna to bring in such papers having been refused in the registry—under sect. 26 of the Court of Probate Act, 1857, ordered the executors to bring all such testamentary papers into the registry, and that the applicants should be allowed to take copies of them, but that they should pay the costs of such deposit and of the motion (*f*).

(*d*) *Evans* v. *Jones* (1867), 36 L. J. P. 83.
L. J. P. 70; 16 L. T. 299.
(*e*) *Cope, In goods of* (1867), 36 L. J. P. 83.
(*f*) *Shepherd, In goods of*, (1891) P. 323; 60 L. J. P. 102.

CHAPTER XXI.

MISCELLANEOUS.

(1) Administration Bonds (*a*).

Before 1858.

It was the practice of the Ecclesiastical Courts, previous to the passing of the Court of Probate Act, 1857, to require persons to whom grants of administration were committed to give a bond to the ordinary for the due performance of their duties (*b*).

Persons to whom grant of administration shall be committed shall give bond.

By sect. 81 of the Court of Probate Act, 1857: "Every person to whom any grant of administration shall be committed shall give bond to the judge of the Court of Probate to enure for the benefit of the judge for the time being, and, if the Court of Probate or (in the case of a grant from the district registry) the district registrar shall require, with one or more surety or sureties, conditioned for duly collecting, getting in and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct; provided that it shall not be necessary for the solicitor for the affairs of the Treasury or the solicitor of the Duchy of Lancaster applying for or obtaining administration to the use or benefit of Her Majesty to give any such bond as aforesaid."

Penalty on bond.

By sect. 82: "Such bond shall be in a penalty of double the amount under which the estate and effects of the

(*a*) See *post*, Part II. See also Wms. on Exors. 10th ed. pp. 420—430.

(*b*) Wms. on Exors. 10th ed. p. 420.

deceased shall be sworn, unless the Court or district registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the Court or district registrar so to do, and the Court or district registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court or district registrar shall think reasonable." Administration bond.

And by sect. 83: "The Court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the Court to assign the same to some person, to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond." Power of Court to assign bond.

It was formerly held that the Court had no power under any circumstances to dispense with an administration bond; although, under sect. 81, it has power to dispense with sureties altogether (*c*); but no bond is ever required from the King's Proctor.

The following are some of the principal reported cases relating to administration bonds:— Sureties dispensed with.

Where the unadministered estate of a testator had been transferred to the Accountant-General of the Court of Chancery and a bill had been filed praying for it to be administered by the Court (*d*); where an administrator was beneficially entitled to a fund which had been paid into the Court of Chancery, and was, in consequence of sickness, in great poverty and unable to induce any of his Estate in Chancery.

(*c*) *Powis, In goods of* (1865), 34 L. J. P. 55.

(*d*) *Cleverly* v. *Gladdish* (1862), 2 S. & T. 335; 31 L. J. P. 53; 5 L. T. 689.

Administration bond. Sureties dispensed with.

friends or relations to become sureties to the bond (*e*); and where the grant was made to the chief official receiver in bankruptcy (*f*): the Court dispensed with sureties altogether.

The mere fact that a receiver of the personal estate had, according to the practice before the Judicature Acts, been appointed by the Court of Chancery, was held to be no ground for dispensing with sureties (*g*); but where an estate was being wound up in the Chancery Division and an order had been made that each share should be paid by the Court to the party entitled, the Court of Probate allowed the security to be limited to twice the amount of the applicant's beneficial interest (*h*).

The Court will not dispense with sureties because the property is large and the risk small, but it will, if justified by the circumstances of the case, allow the security to be made up by several bonds (*i*).

Where an intestate left 3,000*l.* and debts amounting to about 44*l.*, and his mother was solely entitled to his estate, the Court merely required her to give a bond with sureties to the amount of 100*l.* (*k*).

Where, after an estate had been partly administered,

(*e*) *De la Farque, In goods of* (1862), 2 S. & T. 631; 31 L. J. P. 199; 7 L. T. 194.

(*f*) *Cope, In goods of* (1890), 15 P. D. 107; 59 L. J. P. 94; 62 L. T. 500; *Cornwall* (*Solicitor to Duchy of*) v. *Canning* (1880), 5 P. D. 114, followed. See also *Wilcocks, In goods of* (1892), 67 L. T. 528; *Stelfox, In goods of* (1894), 70 L. T. 814; *Conolly, In goods of* (1896), 74 L. T. 461; *Morgan, In goods of* (1896), 75 L. T. 190; *Astbury, In goods of* (1899), 80 L. T. 296; *Unwin, In goods of* (1903), 87 L. T. 749.

(*g*) *Jackson* v. *Jackson* (1866), L. R. 1 P. & D. 12; 35 L. J. P. 3; 13 L. T. 336.

(*h*) *Paxton, In goods of* (1889), 14 P. D. 40; 58 L. J. P. 58; 60 L. T. 513. See also *Cormack, In goods of*, (1891) P. 151; 60 L. J. P. 96; 63 L. T. 710; *Askew* v. *Askew*, (1891) P. 174; 60 L. J. P. 52; 64 L. T. 145; *Leach, In goods of* (1899), 80 L. T. 170.

(*i*) *Earle, In goods of* (1885), 10 P. D. 196; 54 L. J. P. 95; *M'Gowan, In goods of* (1885), 10 P. D. 197. See also *Weir, In goods of* (1859), 1 S. & T. 506; 28 L. J. P. 111; 2 L. T. 191.

(*k*) *Gent, In goods of* (1858), 1 S. & T. 54; 27 L. J. P. 37. See also *Stacpoole, In goods of* (1861), 2 S. & T. 316; 30 L. J. P. 191; 5 L. T. 140.

application was made for a grant of administration, the Court allowed a bond to be given in double the amount of the unadministered estate (*l*). Sureties dispensed with.

A testator having mislaid his first will executed a second one. By both wills he made his wife universal legatee, and by the first will he appointed her sole executrix, but he made no appointment of executors in the second will. The Court granted the widow administration with the second will annexed and allowed her to give her personal bond, without sureties (*m*).

In a case of an estate where all the debts were paid, and the persons applying for administration were entitled, as the duly constituted representatives of two other estates, to receive the whole of the residue, the Court dispensed with sureties and directed that the bond of the applicants alone should be accepted (*n*).

Where the applicant for administration is the nominee of a public department of State, sureties may be dispensed with (*o*).

Where a company were appointed executors and trustees under a will, the Court granted administration with the will annexed to the general manager of the company as their nominee and accepted the company themselves as sole surety to the administration bond (*p*).

Administration bond when administrator is out of England.

"If the administration be committed to a person out of England, it used to be requisite that the sureties to the bond should be resident within the kingdom.

(*l*) *Oakey, In goods of,* (1896) P. 7; 65 L. J. P. 38. See also *Fozard, In goods of* (1863), 3 S. & T. 173; 32 L. J. P. 160; 8 L. T. 702; *Halliwell, In goods of* (1885), 10 P. D. 198; 54 L. J. P. 32.

(*m*) *Allen, In goods of,* (1893) P. 184; 62 L. J. P. 111; 69 L. T. 420.

(*n*) *Paton, In goods of,* (1901) P. 188; 70 L. J. P. 49; 84 L. T. 570. See also *Cory, In goods of,* (1903) P. 62; 72 L. J. P. 24; 88 L. T. 566.

(*o*) *Bryan, In goods of,* (1905) P. 88; 74 L. J. P. 41; 92 L. T. 426; 21 Times L. R. 107. In a very recent case where a grant was made to an Official Receiver in Bankruptcy, who as an official of the Board of Trade had given security for the due performance of his duties, the Court dispensed with sureties to the bond, under sect. 73. *Causton, In estate of,* (1906) P. 124.

(*p*) *Hunt, In goods of,* (1896) P. 288; 66 L. J. P. 8.

Administration bond. Sureties where administrator out of England.

"When this rule was established, the assignee of the bond could not have served the sureties out of England with process, but since the Common Law Procedure Act (15 & 16 Vict. c. 76), s. 18, service on a person abroad may be effected, and the rule has consequently been relaxed" (*q*).

The Court refused to allow residents in Scotland to be sureties, on the ground that the Common Law Procedure Act, s. 18, excepted places in Scotland and Ireland (*r*); however, in a later case, where the administrator was the only person beneficially interested in the estate, and there were no creditors, the Court accepted sureties resident in Scotland (*s*).

The judge has directed that where it can be sworn that the deceased was a foreign subject and left no debts in England foreign subjects may be accepted as sureties (*t*).

Justification of sureties to the bond.

"Justifying securities to the administration bond are called for at the Court's discretion, according to the circumstances of each case; except that there is one general rule, that where there is not a personal service of the decree on the party or parties having a prior claim to the grant, justifying securities are required (*u*). Where the sureties are required to justify in the ordinary course of practice the Court will not dispense with this, even partially, except under very special circumstances (*x*).

"Where the application that the sureties may be directed to justify is made on behalf of the next of kin, the Court

(*q*) Wms. on Exors. 10th ed. p. 426, citing *O'Byrne, In goods of* (1828), 1 Hagg. 326; and *Cambiaso* v. *Negrotto* (1824), 2 Add. 439, as to bonds on grants to foreigners in the Ecclesiastical Courts.

(*r*) *Herbert* v. *Shiell* (1864), 3 S. & T. 479; 33 L. J. P. 142.

(*s*) *Houston, In goods of* (1866), L. R. 1 P. & D. 85; 35 L. J. P. 41.

(*t*) See, on this point, *Reed, In goods of* (1863), 3 S. & T. 439; *Fernandez* (or *Hernandez*), *In goods of* (1879), 4 P. D. 229; 48 L. J. P. 31; *De Beaufort, In goods of*, (1893) P. 231; 62 L. J. P. 101; 69 L. T. 420; *Scott, In goods of*, (1895) P. 342; 65 L. J. P. 15; 73 L. T. 317; *Blank, In goods of* (1894), 70 L. T. 810.

(*u*) Wms. on Exors. 10th ed. p. 427, citing *Aitkin* v. *Ford* (1830), 3 Hagg. 193; *Milligan, In goods of* (1852), 2 Robert. 108.

(*x*) *Ibid.*, citing *Howell* v. *Metcalfe* (1824), 2 Add. 348.

feels bound to grant it; but it may be sufficient for the sureties to justify in respect of the share of the party excluded from the administration" (*y*). Justifying security, when required.

As a general rule, in the Ecclesiastical Courts, creditors, as such, had no right to call upon the next of kin to give justifying security (*z*).

A residuary legatee for life, taking administration with the will annexed, may be compelled to give justifying security (*a*); and the Court refused, on the renunciation of a co-executor, to grant administration with the will annexed, without justifying sureties, to the daughter, the residuary legatee, during the lunacy of her mother, the other executor and residuary legatee in trust (*b*).

Where the parties beneficially entitled desired a grant for their nominee, under sect. 73, the Court required the sureties to justify (*c*).

Where the estate had been administered, except as to one legacy, and a grant *de bonis non* was obtained, the Court required the sureties to justify (*d*).

The Court will only grant administration to the attorney of a next of kin who is abroad on the same terms as it would have granted it to the party himself, and therefore will not alter the usual conditions as to the administration bond (*e*). Administration to attorney of next of kin;

Since the Married Women's Property Act, 1882, when a married woman is administratrix, it is not necessary that her husband should join in the administration bond; the husband incurring no responsibility and the grant conferring no benefit upon him (*f*). to married woman since 1882.

(*y*) Wms. on Exors. 10th ed. p. 427, citing *Coppin* v. *Dillon* (1831), 4 Hagg. 361.

(*z*) *Hughes* v. *Cookson* (1753), 1 Cas. temp. Lee, 386; *Hickman* v. *Black* (1756), 2 Cas. temp. Lee, 251.

(*a*) *Friswell* v. *Moore* (1819), 3 Phill. 139.

(*b*) *Hardstone, In goods of* (1828), 1 Hagg. 487; *Williams, In goods of* (1831), 3 Hagg. 217.

(*c*) *Roberts, In goods of* (1858), 1 S. & T. 64. See also *Burrell, In goods of* (1858), 1 S. & T. 64.

(*d*) *King, In goods of* (1883), 8 P. D. 162; 52 L. J. P. 93.

(*e*) *Goldsborough, In goods of* (1859), 1 S. & T. 295; 5 Jur. N. S. 517.

(*f*) *Ayres, In goods of* (1883), 8 P. D. 162; 52 L. J. P. 98.

Administration bond.

Where the administrator was in Japan, and a considerable sum became payable to the estate of the deceased under an order of the Court of Chancery, the Court allowed another person to file an affidavit as to the increase of the property and to execute a bond with two sureties to cover the increase of property, on the understanding that the administrator should execute a similar bond as soon as possible (*g*).

Discharging original sureties.

The Court will not discharge the original sureties to the administration bond and allow other sureties to be substituted for them (*h*).

Attestation of bond.

Where the property was small and the administratrix lived in Australia, the Court dispensed with the rule that requires the bond to be attested by the person who administers the oath (*i*).

Guarantee Society as surety.

The "Guarantee Society" has been accepted by the Court as surety to a bond, even though the directors do not by bond render themselves personally liable (*k*).

Assignment of bond.

With respect of assignment of administration bonds under sect. 83 of the Court of Probate Act, 1857 (*l*), where a person interested under the estate of a deceased intestate makes out a *primâ facie* case for the assignment of the administration bond, the Court will direct a rule *nisi*, calling on the sureties to show cause why the bond should not be assigned (*m*). On a *primâ facie* case of a breach of an administration bond being

(*g*) *Ross, In goods of* (1877), 2 P. D. 274; 46 L. J. P. 57.

(*h*) *Stark, In goods of* (1866), L. R. 1 P. & D. 76; 35 L. J. P. 42; 13 L. T. 682.

(*i*) *Parker, In goods of* (1867), L. R. 1 P. & D. 30; 36 L. J. P. 26; 15 L. T. 248.

(*k*) *Carpenter* v. *Queen's Proctor* (1882), 7 P. D. 235; 51 L. J. P. 91; 46 L. T. 821.

(*l*) *Ante*, p. 229. The older cases cited in the last edition of this work, with respect to the assignment of bonds given before Jan. 1st, 1858 — viz., *Bouverie* v. *Maxwell* (1867), L. R. 1 P. & D. 272; 36 L. J. P. 3; 15 L. T. 137; *Young* v. *Hughes* (1859), 4 H. & N. 76; 28 L. J. Eq. 161; and *Young* v. *Oxley* (1858), 1 S. & T. 25; 27 L. J. P. 30—are no longer of any practical value. But see, on this subject, Wms. on Exors. 10th ed. pp. 423—425.

(*m*) *Jones, In goods of* (1863), 3

established, after notice to the sureties, the Court will direct the bond to be assigned, but might refuse to do so if on cause shown the proceeding appeared to be frivolous and vexatious (*n*). Assignment of bond.

An administrator (with will) who distributes the whole estate, without retaining in his hands a sum sufficient to pay a legacy left to an infant on his attaining his majority, commits a breach of the administration bond for which the sureties are liable (*o*). Administrator committing breach of bond.

One surety to an administration executed the same on being assured that the other person named in it as co-surety would execute it. The latter refused to do so, and the bond was executed by another surety. The first surety did not assent to the alteration: held, that the bond was void and must be cancelled (*p*). Bond cancelled.

(2) Compromise of Probate Actions (*q*).

The Court has jurisdiction to make terms of compromise in a probate action a rule of Court, and to enforce it as such (*r*). Compromise.

Where an action has been compromised before trial, the Court will not make the terms of compromise a rule of Court, as it has no power to enforce compliance with the terms; but it will make an order that the contentious pro- Compromise before trial.

S. & T. 28; 32 L. J. P. 26; 8 L. T. 90.

(*n*) *Baker* v. *Brooks* (1861), 3 S. & T. 32; 32 L. J. P. 25; 8 L. T. 89; *Young, In goods of* (1866), L. R. 1 P. & D. 186; 35 L. J. P. 126; 14 L. T. 634. And see further, as to the practice with respect to suing on administration bonds, *Rowden, In goods of* (1862), 3 S. & T. 25; *Irving, In goods of* (1869), L. R. 1 P. & D. 658; 38 L. J. P. 83; 20 L. T. 684; *Cartright, In goods of* (1876), 1 P. D. 422; 34 L. T. 72.

(*o*) *Dobbs* v. *Brain*, (1892) 2 Q. B. 207; 61 L. J. Q. B. 749; 67 L. T. 371.

(*p*) *Cowardin, In goods of* (1902), 86 L. T. 261.

(*q*) See *post*, Pt. II., "Practice."

(*r*) *Harvey* v. *Allen* (1858), 1 S. & T. 151.

Compromise of suit.

ceedings be discontinued and the terms of compromise filed in the registry (*s*).

Agreement by executor to renounce not recognized by Court.

The Court of Probate will not recognize an agreement for an executor to renounce. Therefore, where at the trial at the assizes of issues in a testamentary suit the suit was compromised on certain terms, *inter alia*, that two of the executors named in the will should renounce, and that the agreement should be made a rule of Court, and these terms were embodied in an order of Nisi Prius, the Court refused to make the order a rule of Court (*t*).

Compromise at trial. Application to make rule of Court two years afterwards refused.

During the progress of a suit a compromise was entered into between the parties and committed to writing. The verdict was thereupon given for the validity of the will, but no order was made as to costs. The Court two years afterwards refused to permit the terms of compromise to be embodied in an order to be enforced as a rule of Court (*u*).

Next of kin bound by decree, though not cited;

A next of kin, although not cited to see proceedings and not having intervened, is bound by a decree in a suit, in which a will is contested by other next of kin, if he was cognizant of the suit and had an opportunity of intervening.

but not where suit has been compromised.

This rule does not apply to a case when the parties to a suit compromise it, and the decree is founded on the compromise.

The Court having pronounced for a will in consequence of a compromise between the parties contesting it, the next of kin, who was no party to the suit, although cognizant of it, was held not to be barred by the decree from instituting a fresh suit for the revocation of probate (*x*).

(*s*) *Roadnight* v. *Carter* (1864), 3 S. & T. 421. See also *Evans* v. *Saunders* (1861), 30 L. J. P. 184; 24 L. T. 236.

(*t*) *Hargreaves* v. *Wood* (1863), 2 S. & T. 602; 32 L. J. P. 8.

(*u*) *Carritt* v. *Christian* (1873), L. R. 2 P. & D. 181; 24 L. T. 236.

(*x*) *Wytcherley* v. *Andrews* (1871), L. R. 2 P. & D. 327; 40 L. J. P. 57; 25 L. T. 134. See also *Graves* v. *Graves* (1893), 69 L. T. 420.

In sanctioning arrangements between parties to probate causes, the Court acts upon the statement of counsel that the compromise is expedient, but it does not by such sanction thereby intend to bind infants or any persons other than those who are parties to the compromise (*y*). Compromise of suit. Infants.

Where a testator devised real estate to a charity to the exclusion of a niece, and terms of compromise had been agreed upon between the parties to a probate action in respect of the will, the Attorney-General was cited to see proceedings for the purpose of sanctioning the compromise (*z*).

(3) Parties (*a*).

Parties to probate actions may be classed under three heads— Parties to probate actions, who are.

(1.) Those interested in a testamentary paper, as executors, legatees, &c.;

(2.) Those interested in the estate by reason of their having been connected with the deceased, either by ties of blood or marriage, as the next of kin, heir-at-law, widow, &c.;

(3.) Those not so connected, who nevertheless have, or pretend to have, a claim on the estate as creditors, &c.

By sect. 100 of the Judicature Act, 1873, the word "'*party*' shall include every person served with notice of or attending any proceeding, although not named on the record."

"'*Plaintiff*' shall include every person asking any relief otherwise than by way of counterclaim as a defendant against any other person by any form of proceeding,

(*y*) *Norman* v. *Strains* (1881), 6 P. D. 219; 50 L. J. P. 39; 45 L. T. 191.

(*z*) *Boughey* v. *Minor*, (1893) P. 181; 62 L. J. P. 404.

(*a*) See the rules and practice on this subject, *post*, Pt. II. See also Wms. on Exors. 10th ed. pp. 241—250.

Parties to probate actions, who are.

whether the same be taken by action, suit, petition, motion, summons or otherwise."

"'*Defendant*' shall include every person served with any writ of summons or process, or served with notice of or entitled to attend any proceedings."

Under the term "parties to actions" in the Probate Division are included, besides plaintiffs and defendants, interveners and parties cited to see proceedings.

Executors and others.

The word "executor" includes any kind of executor, whether nominate, according to the tenor, delegate or substituted, in fact any person to whom *probate* in common form can be granted.

Who may put executors, &c. on proof.

By rule 5, C. B., "next of kin and others who, previously to the passing of the said Act, had a right to put executors or parties entitled to administration with the will annexed upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore."

Right of next of kin to put executor to proof in solemn form.

Next of kin are entitled to put executors on proof of a will in solemn form, for the obvious reason that if the proof of the will fails, they become entitled in distribution.

A next of kin, however, *quâ* next of kin, has no right to oppose a testamentary paper, without showing some interest, however small (*b*).

"*Other persons*," who are.

The words "*and others*" used in the rules refer to those persons who, without being next of kin, have interests which are affected by the will, as, for instance, the executor or legatee of a prior will or their representatives.

They do not include the executor himself after he has proved the will in common form; for an executor who has proved a will in common form cannot, as such executor, take proceedings to call in question the validity of that will; he has no right, therefore, to cite the persons inter-

(*b*) *Baskcomb* v. *Harrison* (1850), 2 Robert. 118; 7 Notes of Cas. 275.

ested under it to propound it in solemn form, or show cause why the probate in common form should not be revoked; the executor of an executor is in this respect in the same position as the original executor (*c*). Probate actions, who are parties to.

An executor of a former will has the same right as a next of kin to put an executor of a later will upon proof in solemn form, and to interrogate his witnesses (*d*). Executor of former will.

An "intervener" is a party who voluntarily interposes. A party who is brought into the contest by being cited is not an intervener. Intervener, what is.

Any party whose interest is affected is entitled to oppose the grant of probate.

He must, however, have some interest; it may be very small; even the bare possibility of an interest is sufficient. Party opposing will must have some interest.

But a party who has no interest cannot be permitted to intervene in a cause (*e*).

Therefore, before a person is permitted to contest a will, he may be called upon by the propounder to show his interest; but when two contest a will, neither can call upon the other first to show his interest (*f*). Interest must be shown.

Where an intervener was cited to appear by the defendants, the unsuccessful parties, and had been charged by them with procuring the will by undue influence, the Court, in pronouncing for the will, condemned the defendants in the costs of the intervener, as well as of the executors (*g*). Defendant condemned in intervener's costs.

A party having no interest in a will cannot propound it (*h*). Party having no interest.

"A creditor has only a right to have a *constat* of the Creditor,

(*c*) *Chamberlain, In goods of* (1867), L. R. 1 P. & D. 316; 36 L. J. P. 52; 16 L. T. 97.

(*d*) *Boston* v. *Fox* (1860), 4 S. & T. 199.

(*e*) *Crispin* v. *Doglione* (1860), 2 S. & T. 17; 29 L. J. P. 130; 3 L. T. 179. See also *Kipping* v. *Ash* (1846), 1 Robert. 270.

(*f*) *Hingeston* v. *Tucker* (1862), 2 S. & T. 596; 31 L. J. P. 91; 7 L. T. 337.

(*g*) *Tennant* v. *Cross* (1887), 12 P. D. 4; 56 L. J. P. 74; 57 L. T. 372.

(*h*) *Parton* v. *Johnson* (1868), L. R. 1 P. & D. 549; 37 L. J. P. 67; 18 L. T. 923.

right of, to oppose will.

estate of the deceased, to see whether there are assets sufficient to pay the debts; but he cannot controvert the validity of a will; for it is indifferent whether he shall receive his debt from an executor or an administrator; and if a creditor was admitted to dispute the validity of a will, it would create infinite trouble, expense, and delay to executors" (*i*).

"But when administration has been granted to a creditor he may oppose a will; he is the same for this purpose as the next of kin" (*k*).

"And he may contest a will without costs; because he is the appointee of the Court, and defends in that character, and does not appear simply as a creditor" (*l*).

Evidence of relationship.

A deed executed by the deceased, in which the defendant was described as his sister, was held to be sufficient evidence of relationship to enable her to contest the validity of his will (*m*).

Pleading by intervener. Intervener in suit for revocation.

An intervener may plead after issue joined by leave of the Court (*n*). To entitle a person to intervene in a suit for revocation, it is not necessary that he should have had an interest at the time of the death of the deceased. An interest acquired subsequently by purchase of part of the estate from the administrator is sufficient (*o*).

Right to prove will in solemn form.

There is no limitation as to time in requiring a will to be proved in solemn form (*p*).

Not barred by lapse of time, or by receipt of a legacy.

Neither is a party barred from disputing a will by receipt of a legacy (*q*); but if he desire to dispute a will

(*i*) Wms. on Exors. 10th ed. p. 246, citing *Burroughs* v. *Griffiths* (1754), 1 Cas. temp. Lee, 544; *Menzies* v. *Pulbrook* (1840), 2 Curt. 845.

(*k*) *Ibid.*, citing *Dabbs* v. *Chisman* (1810), 1 Phill. 159, 160.

(*l*) *Ibid.*, citing *Menzies* v. *Pulbrook* (1840), 2 Curt. 851.

(*m*) *Smith* v. *Tebbitt* (1867), L. R. 1 P. & D. 354; 36 L. J. P. 35; 15 L. T. 594.

(*n*) *Jones* v. *Williams* (1865), 4 S. & T. 19; 34 L. J. P. 102.

(*o*) *Lindsay* v. *Lindsay* (1873), 42 L. J. P. 32; 27 L. T. 592.

(*p*) *Topping, In goods of* (1853), 2 Robert. 620.

(*q*) *Core* v. *Spenser* (1823), 1 Add. 374, in Sir J. Nicholls' judgment in *Bell* v. *Armstrong*.

after having so received his legacy, he must bring the amount of the legacy into Court (*r*). Parties to be cited.

"When a will is to be proved in solemn form, it is still requisite, in accordance with the old practice, that such persons as have interest (that is to say, the widow and next of kin of the deceased, to whom the administration of his goods ought to be committed, if he died intestate, and now the heir-at-law if there is real estate) should be cited to be present at the probation and approbation of the testament" (*s*). Widow and next of kin.

In a probate action the parties interested in establishing an intestacy were the widow of the testator and his brother, the heir-at-law, and the widow was a lunatic confined in an asylum in Australia, and the heir-at-law had already appeared as a party in the suit, the Court refused to order the widow to be cited to see proceedings (*t*).

Where an executor propounding a will cited the next of kin to see proceedings, and they appeared, but he was uncertain whether there were any other next of kin, the Court made an order upon the persons cited, under 20 & 21 Vict. c. 77, s. 24 (*u*), to attend before the registrar to be examined as to the state of the family (*x*). C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 24.

Previous to the passing of the C. P. Act, 1857, Courts of Probate never pretended to have any jurisdiction over realty. But now, under the operation of sect. 61 and following sections of the C. P. Act, 1857 (20 & 21 Vict. c. 77), "the heir-at-law, devisees and other persons having "or pretending interest in the real estate affected by the "will" are to be cited or summoned as though they were Heir-at-law, devisees, &c.

(*r*) *Bell* v. *Armstrong* (1823), 1 Add. 374; *Braham* v. *Burchell* (1826), 3 Add. 256, 257. *Secus*, where the legatee is a minor: *Goddard* v. *Norton* (1847), 5 Notes of Cas. 76. See Wms. on Exors. 10th ed. p. 245, note (*i*).

(*s*) Wms. on Exors. 10th ed. p. 241.

(*t*) *Ward* v. *Huckle* (1887), 12 P. D. 110; 56 L. J. P. 110; 57 L. T. 495.

(*u*) See *post*, Pt. II.

(*x*) *Shepheard* v. *Beetham* (1872), L. R. 2 P. & D. 384; 41 L. J. P. 44.

C.P. Act, 1857 (20 & 21 Vict. c. 77), s. 63.

next of kin and the will affected personalty. They also may become parties or intervene for their respective interests. The penalty on this indulgence is that they are bound by the decree of the Court, whether for or against the will. The 63rd section provides that where a deceased had no real estate or power to appoint to real estate beneficially, or where the will does not affect real estate, these persons need not be cited (*y*).

Heir-at-law.

An heir-at-law who has not been cited cannot by entering a caveat prevent the executors of a will affecting realty from obtaining probate in common form (*z*).

When to be cited.

The fact of one co-heir being an infant and child of a plaintiff is no ground for the Court refusing to allow such co-heir to be cited (*a*).

Assignee of heir-at-law.

When a contention arises about a testamentary paper, the Court will not order the assignee of the heir-at-law of the testator to be cited as a person having or pretending interest in the real estate affected by the will (*b*).

Citing devisees in prior will.

Executors propounding a will, disposing of real estate, may issue citation to see proceedings against devisees under a prior will, which is not propounded (*c*).

By the Married Women's Property Act, 1882, a married woman may sue or be sued as a *feme sole*.

Guardians of

Minors and infants sue by a guardian *ad litem*, with

(*y*) For practice as to citation of parties interested, see *post*, Pt. II.

(*z*) *Young* v. *Ferrie* (1860), 4 S. & T. 210; 29 L. J. P. 69. But see now the Land Transfer Act, 1897.

(*a*) *Nichols* v. *Binns* (1858), 1 S. & T. 19; 27 L. J. P. 14. And see further the following older cases as to citing the heir-at-law and devisees of real estate:—*Moore* v. *Holgate* (1866), L. R. 1 P. & D. 101; 35 L. J. P. 46; 14 L. T. 24; *Domville* v. *Domville* (1865), 4 S. & T. 17; 34 L. J. P. 79; 12 L. T. 54; *Coplestone* v. *Nicholes* (1864), 33 L. J. P. 57; *Peacock* v. *Lowe* (1867), L. R. 1 P. & D. 311; 36 L. J. P. 46; 15 L. T. 634; *Comer* v. *Parnell* (1867), 36 L. J. P. 81; 16 L. T. 299; *Emberley* v. *Trevannion* (1860), 4 S. & T. 197; 29 L. J. P. 142.

(*b*) *Jones* v. *Jones* (1882), 7 P. D. 66; 51 L. J. P. 93; 46 L. T. 919.

(*c*) *Lister* v. *Smith* (1863), 3 S. & T. 53; 32 L. J. P. 13; 7 L. T. 219.

this difference, that a minor chooses his guardian, while an infant has his guardian chosen for him by the Court (*d*). minors and infants.

But the Court is not bound by the election of the minor, especially where he is not in a position to act independently. So the Court refused to appoint the paternal uncle guardian to a minor, for the purpose of instituting a suit on his behalf against the mother, in reference to the validity of the will of the minor's father, without first citing the mother to show cause why such an appointment should not be made (*e*); and in appointing a guardian *ad litem* to an infant, the Court, if it thinks fit, may pass over the next of kin (*f*). Court not bound by election of minor as to guardian.

When a will is disputed by a guardian *ad litem* on behalf of infants, the Court has power to inquire whether the suit is for their benefit (*g*). Guardian *ad litem* disputing will.

It must be remembered that, under the Judicature Act, 1873, sect. 24, sub-ss. 6, 7, the Probate Division has concurrent jurisdiction with the other divisions of the High Court. Under this section it was held that "when the will of a married woman is tendered for probate on the ground that she had separate property, and the probate is contested, if the Court is satisfied that there is separate property, it has power to grant probate of all such property as the testatrix had power to dispose of without deciding what that property is." Jud. Act, 1873, s. 24, sub-s. 7. Concurrent jurisdiction.

"*But it is generally the duty of the Court, so far as the evidence and pleadings enable it to do so, to decide judicially of what such property consists.*"

And, semble, *where the will is made under a power, if the Court has all the persons interested before it, it ought to decide the question, not only whether there is a power, but whether* Powers of Court as Court of Construction.

(*d*) For practice as to appointment of guardians, see *post*, Pt. II.

(*e*) *Jenkins, In goods of* (1869), L. R. 1 P. & D. 690; 38 L. J. P. 72.

(*f*) *Quick* v. *Quick* (1864), 3 L. J. 177; 10 Jur. N. S. 372.

(*g*) *Percival* v. *Cross* (1882), 7 P. D. 234; 52 L. J. P. 16; 47 L. T. 353.

Powers of Court.

it is well executed (*r*). And in a later case the Court allowed the pleadings to be amended, by adding a prayer that the plaintiffs held their shares as trustees for the defendants and the interveners (*s*).

Delay and acquiescence.

The Court will not revoke letters of administration at the instance of a person guilty of delay and acquiescence, and whose only object in seeking the revocation is to follow the estate into the hands of the persons to whom it has been distributed in the Chancery Division (*t*).

(4) Pleadings in Probate Actions.

Pleadings.

The first step in a probate action is in reality, though not technically, the entry of a caveat, but this subject is fully dealt with in Part II.

Caveat.

After the proceedings connected with the caveat are brought to a conclusion, the next step is the issue of a "writ of summons," by which all probate actions are now commenced (*u*).

Writ of summons.

A probate action is commenced by the issue of the writ, not by the entering of a caveat or the appearance of the caveator in answer to the warning of the caveat (*x*).

The plaintiff in a probate action cannot include in the writ of summons a prayer for a declaration of legitimacy (*y*).

After the writ of summons has been duly served and an appearance has been duly entered, or the proper time for entering an appearance has elapsed, the next step is for

(*r*) *Tharp, In goods of, Tharp* v. *M'Donald* (1878), 3 P. D. 76; 38 L. T. 867. But see *Harding* v. *Sutton*, 59 L. T. 838.

(*s*) *Betts* v. *Doughty* (1880), 5 P. D. 26; 48 L. J. P. 71; 41 L. T. 560.

(*t*) *Mohan* v. *Broughton*, (1900) P. 56; 69 L. J. P. 20; 82 L. T. 29.

(*u*) For practice as to writs, service of appearance, &c., see *post*, Pt. II. See also Wms. on Exors. 10th ed. pp. 1516, 1543, 1580.

(*x*) *Moran* v. *Place*, (1896) P. 214; 65 L. J. P. 83; 74 L. T. 661.

(*y*) *Warter* v. *Warter* (1890), 15 P. D. 35; 59 L. J. P. 45; 62 L. T. 328.

the plaintiff to file his statement of claim, where necessary. The defendant then delivers his defence and the pleadings run through their regular course (*z*). Statement of claim and defence.

Where undue influence is alleged, the names of the persons charged with having exercised it may be ordered to be given, but not the particulars of the acts charged (*a*). This has long been the practice of the Probate Court, and it has been decided that it ought not now to be disturbed. Undue influence.

Nor will the Court order particulars where incapacity is alleged (*b*).

Where the executors of a will, having called in probate of an earlier will, propounded the later will, and alleged that the defendant had surreptitiously obtained probate of the earlier will, knowing of the existence of the later, and that such probate ought to be revoked, and the will pronounced invalid, the Court ordered the allegations as to the earlier will to be struck out (*c*). Striking out pleadings.

A plaintiff propounded a will. The defendant in his answer denied the due execution of the will and alleged that the deceased subsequently executed another will by which the first was revoked, and, finally, that he destroyed the second will with the intention of revoking it. The Court ordered the last allegation as to the destruction of the second will to be struck out as irrelevant, it being no answer to the plaintiff's claim (*d*).

Where a plaintiff propounded a will of September, 1880, and the defendant counterclaimed to prove a will of May, 1881, and the plaintiff replied (*inter alia*) that testator was not of sound mind when will of May, 1881, was exe-

(*z*) For practice as to pleadings generally, see *post*, Pt. II.

(*a*) *Lord Salisbury* v. *Nugent* (1884), 9 P. D. 23; 53 L. J. P. 23; 50 L. T. 160. See also *Harris* v. *Bradbury* (1861), 30 L. J. P. 168; *West* v. *West* (1865), 4 S. & T. 22; 34 L. J. P. 146.

(*b*) *Hankinson* v. *Barningham* (1884), 9 P. D. 62; 53 L. J. P. 16.

(*c*) *Rosbotham* v. *Rosbotham* (1861), 2 S. & T. 121; 30 L. J. P. 38; 3 L. T. 557.

(*d*) *Powell* v. *Powell* (1866), L. R. 1 P. & D. 6; 35 L. J. P. 5; 13 L. T. 566.

Striking out pleadings.

cuted, and, fifthly, that, if it was duly executed, it was duly revoked by a will of June, 1881, executed when testator was in a similar state of mind:—Held, that the fifth clause ought not to be struck out as embarrassing (*e*).

Counterclaim.

A claim to pronounce against the validity of the will of a married woman who had obtained a protection order, and a counterclaim to discharge the protection order, may be included in the same action (*f*).

Interest actions in Probate Division.

Meaning of term.

"Interest causes" in the Probate Division, which are now included under the general term "Probate Actions," are suits where the legal interest of a person in the estate of the deceased is denied. Such a suit may arise either as a collateral question in a testamentary cause, in which case it may be tried apart from the main issue between the parties, or as an original suit, where the right to administration of the estate of an intestate is disputed (*g*).

For instance, where a party applying for a grant is stopped by a caveat, the caveator is warned; he enters an appearance setting forth his interest, the party applying for the grant then commences an action in the usual way by writ of summons. If the defendant appears to the writ, the plaintiff delivers his statement of claim denying the interest of the defendant, and the pleadings continue, and the action proceeds in the usual way. It is obvious that such an action may arise equally in testamentary causes as in cases of intestacy.

(*e*) *Rigg* v. *Hughes* (1884), 9 P. D. 68; 53 L. J. P. 62; 50 L. T. 293.

(*f*) *Mudge* v. *Adams* (1881), 6 P. D. 54; 50 L. J. P. 49; 44 L. T. 185. See also *Mahoney* v. *McCarthy*, (1892) P. 21; 61 L. J. P. 41.

(*g*) *Inkson* v. *Jeeves* (1863), 3 S. & T. 39; 32 L. J. P. 69; 8 L. T. 173, was cited in the last edition as an example of a case in which it was held that the plaintiff could call upon the defendants to set forth their interest after the declaration (now "statement of claim") had been delivered. But this case was decided long before the Judicature Acts, and could hardly be relied upon in these days, when nearly every reasonable amendment of pleadings is allowed upon proper terms.

Striking out defence.

In an interest suit, where the real question in dispute was the legitimacy of the plaintiff, on motion to strike out the defence, the Court held that the question was too serious a matter to be decided on motion (*h*).

Plea that testator did not intend document to operate as will.

It was held in an old case that before a plea that the testator did not intend the alleged testamentary instrument to operate as a will can be put on the record, the leave of the Court must be obtained; but it is not necessary to furnish particulars of such plea (*i*).

Relying on will of later date.

Where a party relies upon a will of a later date than that propounded, he must set it out in his statement of defence (*k*).

No plea except revocation to earlier will.

An executor propounding a will cannot plead in opposition to an earlier will any plea except revocation by the will which he propounds (*l*); but it must be remembered that this case was decided before the Judicature Acts.

Statement of claim, will of person domiciled abroad.

A statement of claim propounding a will, made by a person domiciled abroad, should aver in terms that the will was valid according to the law of the foreign country (*m*).

Plea bad on account of vagueness.

A plea that the will propounded "is not the will of the deceased," without any other words, is too vague and indefinite (*n*).

Plea of want of knowledge and approval.

A plea that the testator at the time he executed the will did not know and approve of its contents is good (*o*).

Undue influence and fraud must be specially pleaded.

Undue influence and fraud must be specially pleaded. A plea of undue influence is insufficient to let in a charge of fraud against the party propounding the will (*p*).

The Probate Division has, apart from the Judicature

(*h*) *Harrington, In goods of* (1891), 63 L. T. 228.

(*i*) *Harrison* v. *Kirby* (1868), 17 L. T. 152. But this case is of doubtful authority now.

(*k*) *Leake* v. *Hurst* (1861), 30 L. J. P. 39.

(*l*) *Parton* v. *Johnson* (1868), L. R. 1 P. & D. 549; 37 L. J. P. 67; 18 L. T. 923.

(*m*) *Isherwood* v. *Cheetham* (1862), 2 S. & T. 607; 31 L. J. P. 99; 7 L. T. 256.

(*n*) *Owen* v. *Davis* (1864), 3 S. & T. 588; 33 L. J. P. 201.

(*o*) *Hastilow* v. *Stobie* (1866), L. R. 1 P. & D. 64; 35 L. J. P. 18; 13 L. T. 473.

(*p*) *White* v. *White* (1862), 2 S. & T. 504; 31 L. J. P. 215.

Staying proceedings.

Acts, an inherent jurisdiction, in common with other Courts, to stay proceedings which are frivolous and vexatious, and an abuse of the process of the Court.

Therefore, where an action was brought to obtain revocation of letters of administration granted in 1798, the plaintiff claiming to represent the next of kin of the intestate, and the defendants being the representatives of the deceased administrator, the Court, having regard to the lapse of time and the fact that defendants did not and could not succeed to the administration sought to be revoked, and the other circumstances of the case, held that the action was frivolous and vexatious, and must be dismissed (*q*).

Amendment of pleadings, when allowed. Examples of.

A plaintiff who had wrongly described himself was allowed to amend that description on payment of defendant's costs up to time of amendment, exclusive of the costs of entering an appearance (*r*).

Defendants, who disputed the validity of two codicils only, were allowed to amend within a week, by adding pleas against the will, but were ordered to bring a legacy received by one of them into Court, and pay costs of motion (*s*).

Where it is proposed to add a plea after issue joined, the Court must be satisfied on affidavit of the necessity of such plea (*t*).

The inclination of the Court is to allow the record to be amended at the trial by the addition of a new plea, rather than to shut out any defence which might be raised. The defendants were allowed to put on the record, at the trial, a plea that the will in dispute had been obtained by the undue influence of one of the plaintiffs, subject to the postponement and rehearing of the cause, if required by

(*q*) *Willis* v. *Earl Beauchamp* (1886), 11 P. D. 59; 55 L. J. P. 17; 54 L. T. 185.

(*r*) *Ridgway* v. *Abingdon* (1863), 3 S. & T. 31; 32 L. J. P. 107.

(*s*) *Ware* v. *Claxton*, 1 S. & T. 251.

(*t*) *Twells* v. *Clarke* (1864), 3 S. & T. 280; 33 L. J. P. 49; 9 L. T. 658.

the plaintiffs, and to the payment by the defendants of all expenses incurred by such postponement (*u*).

Amendment of pleadings, when allowed.

And where a testatrix made a will in 1853, by which she gave her property equally between the plaintiffs, defendants, and interveners, and in the course of the trial of an action in which the plaintiffs propounded the will of 1853, it appeared that in 1874 the testatrix had given instructions for another will, which would have deprived the plaintiffs of all interest in her estate, and evidence was tendered to show that she was prevented by force and threats from executing the proposed will; the Court allowed the pleadings to be amended by adding statements to that effect, and praying for a declaration that the plaintiffs held their shares as trustees for the defendants and interveners (*x*).

Again, where the onus of proof lay on the defendant, the plaintiff was allowed, after the defendant had been cross-examined, and his case had been closed, to amend the pleadings by adding a defence that the codicil in dispute had been obtained by the defendant's fraudulent misrepresentation, the evidence in support of such defence to be confined to matters arising upon the defendant's cross-examination (*y*).

(*u*) *Todd* v. *Simpson*, 1 S. & T. 269.

(*x*) *Betts* v. *Doughty* (1881), 5 P. D. 26; 48 L. J. P. 71; 41 L. T. 566.

(*y*) *Riding* v. *Hawkins* (1889), 14 P. D. 56; 58 L. J. P. 48; 60 L. T. 689.

Part II.

COMMON FORM PRACTICE.

CHAPTER I.

PRACTICE AS TO OBTAINING A GRANT OF PROBATE IN COMMON FORM.

With the intention of providing a practical guide for solicitors having wills to prove, or letters of administration to obtain, it has been thought advisable, in view of changes which have occurred in the practice since the date of the previous edition in 1892, to re-write in a more extended form the chapters which relate to applications for grants in common form.

First, as to probate in common form.

Before the passing of the Land Transfer Act, 1897, which came into operation on the 1st January, 1898, a will of a person dying prior to that date disposing solely of real estate was not admitted to proof in England unless it contained an appointment of executor; but, as since that date real estate has been placed on an equality with personalty for the purposes of probate, both devolving alike upon the legal personal representative of the deceased, grants, whether of probate, or of letters of administration with will annexed, or, in the case of an intestacy, of letters of administration, of any person who dies on or since 1st January, 1898, are made "of all the estate which by

law devolves to and vests in the personal representative of the deceased," and the solicitor will see that this is so sworn in the oath to lead the grant. Should such oath refer only to the *personal* estate of the deceased, it would have to be corrected and re-sworn. In cases of death *before* 1st January, 1898, it would be quite correct to swear to the *personal* estate only, and the grant would issue in that form; but on the principle that the greater includes the less, oaths swearing to "all the estate," &c. are accepted.

The first thing to be considered by the solicitor in preparing an application for probate is the validity of the will. The principles which constitute validity or invalidity of a testamentary disposition have been fully elucidated above, but, for the sake of conciseness and easy reference, those which most closely affect every-day practice may with advantage be recapitulated here.

Rules 17 to 27 of September, 1862, see Appendix.

The cases in which probate is applied for of the will of a person dying before the 1st of January, 1838, being now of such rare occurrence, it is hardly necessary to refer to them more specifically than has been done in Chapter VII., Part I., *q. v.* In all cases where the testator made his will on or since 1st January, 1838: except in cases of privileged wills, which are dealt with on pages 62—65, the will must be signed by the testator at the foot or end thereof, and attested by two witnesses. The attestation clause should state that the will was signed by the testator, or that he acknowledged his signature thereto, in the presence of two witnesses, who subsequently signed their names in his presence. It is not necessary that the witnesses should sign in the presence of each other.

Attestation Rules of 1862, 4 to 7, *q.v.*

The formula by which attestation clauses are tested is, "Signed by the testator in our presence and by us in his," and this is the shortest valid form of attestation. A very large number of wills brought in for probate are deficient in this particular of attestation; either because of the absence of any attestation clause or because it is so im-

perfectly drawn that it does not show the two cardinal facts which *primâ facie* constitute validity; or,

Being on a printed form, which is of common occurrence, the blanks for the pronouns in the attestation clause have not been filled up before execution; or,

The testator has not signed his name at the foot or end thereof (see, however, as to this the Wills Amendment Act, 1852), but has signed his name either in the testimonium clause or in the attestation clause, or below the signatures of the witnesses; or,

The will may be partially or wholly undated; or may be endorsed "draft" or "instructions for will," or other words which may engender a doubt as to whether the document produced is the *last* will of the testator; or the date on the endorsement may differ from that inside the will; or,

Interlineations, alterations, erasures and obliterations. Rules 8, 9, 10, and 11 of 1862, *q.v.*

The will may contain deletions, interlineations, erasures or alterations, which are not duly authenticated by being referred to, and enumerated in the attestation clause as having been made prior to execution; or, which are not initialled by the testator *and* the two witnesses.

[N.B.—Erasures cannot be set up by initialling, but must be authenticated either by reference in the attestation clause or by special affidavit by the witnesses.]

Or, the signature of the testator may be made by mark, or have been written by some other person by the direction of the testator; or, may be illegible; or, may appear more than once at the end of the will.

In all these cases, an affidavit must be sworn by one of the witnesses (if one can speak positively to the facts, but if not by both of them), showing whether the will was or was not duly executed; and on what date; and referring specifically to any unauthenticated alterations stating whether such were or were not made prior to execution.

Where the will has been signed by a mark, or by some other person by direction of the testator and in his presence and in that of the witnesses, unless the facts are fully

disclosed in the attestation clause, the affidavit of execution must state in addition to the ordinary facts that the will was read over to the testator prior to execution, and that he seemed perfectly to understand the contents of same; and this additional information is also frequently required in cases where, whether from illness or advanced age, or illiteracy, the signature of the testator is so scrawled as to be illegible.

Rule 57 of 1862.

It is essential to note that every affidavit made by a witness to a testamentary document must always speak to the due execution of that document.

Where wills are endorsed "draft" or "instructions," &c., in addition to the affidavit of execution, an affidavit of search is required. This affidavit is usually made by the executor or the person applying for the grant, and occasionally by the solicitor who prepared or has had the custody of the will since execution, and it states that careful and diligent search has been made among the depositories where the testator kept his papers of moment and concern, and whether any other testamentary paper, bearing a later date than the document submitted for probate, has or has not been discovered. The affidavit of search is also required, in addition to the affidavit of execution, in cases where the will is undated.

Where the witnesses are dead or cannot be traced, evidence of the fact must be given on oath, before evidence of other persons can be brought in support of due execution, or of the authenticity of alterations.

If the evidence of the witnesses cannot be obtained, and they are satisfactorily accounted for, the affidavit of execution may be made by anyone who may have been present at the execution and can speak to the facts; or, if no one else was so present, or if it is impossible to obtain any other evidence, such as that of the writer of the will, it may be admitted to probate upon proof by affidavit of the handwriting of the testator and of the witnesses.

In cases where it is impossible to obtain definite evidence

of due execution, or in favour of due execution, the registrars may admit a will to probate upon the filing of the consents of all persons prejudiced, *i.e.*, of such persons as would have been entitled to the estate of the deceased if he had died intestate. These consents can only be received where all the persons concerned are *sui juris;* and when the death of the testator was subsequent to the date of the Land Transfer Act, if there is real estate, the consent of the heir-at-law would be required in addition.

Similarly, alterations in a testamentary paper, such as the interpolation of a legacy, or an increase in the amount of a legacy, although no direct evidence of same is obtainable, may be admitted upon the consents of any persons prejudiced, *i.e.*, the residuary legatee and devisee under the will, or if there be no disposition of residue, of the persons who would be entitled in distribution coupled with the heir-at-law if there is real estate.

Should the will be written wholly or partially in pencil, an affidavit should be filed, sworn by some one acquainted with the facts, reciting verbatim the whole of the will or such portion of it as is written in pencil, and stating that the will or such portion of it as is so written is now in the same state and condition as it was at the date of execution.

A variation of this practice is the filing of a second copy of the will, showing pencil writings in red ink. This copy, which is collated by the examiner with the original will, and is filed with it, is known as a copy to perpetuate pencil writings. This practice is occasionally employed where the pencil writing is of small extent or unimportant, but the more general practice is to embody the will in an affidavit as stated.

As a rule, alterations which can be set up as having been made prior to execution are copied "fair" into the probate engrossment, as though they had been fair copied into the will before execution. Where the evidence shows that they were made subsequently to execution, or where

no evidence as to the alteration can be obtained, the alteration is disregarded, and the original text of the will is restored and engrossed; and in the latter cases a copy of the will as restored is filed, upon which the registrar will sign his fiat. This fiat copy will be alluded to later.

In all cases which present exceptional difficulty in regard to alterations, it is advisable to submit the will or codicil with the evidence which has been obtained, for the directions of the Clerk of the Seat as to the method of engrossment; and the latter will, if he considers it necessary, submit any question concerning it to the Registrar for his decision.

If a will or codicil exists in duplicate, and one part is presented for probate, the production of the duplicate is required. A note is made on the document proved, and also in the margin of the executor's oath, "Duplicate produced," but not on the engrossment or probate.

If the duplicate is not forthcoming the Registrars must be satisfied on affidavit as to what has become of it, and whether the part brought in for probate was in the testator's possession at the time of his death. If not satisfied, the Registrars will either refuse probate absolutely, or send the parties to take the opinion of the Court on motion.

Where "any deed, paper, memorandum, or other document," is referred to in a testamentary paper, and the reference raises "a question whether it ought or ought not to form a constituent part of the will" (which cannot be unless it was in existence at the date of execution), its production is required "with a view to ascertain whether it is entitled to probate; and if not produced, its non-production must be accounted for."

If, and when, the document referred to is produced, evidence on oath will be required from the witnesses to the will or codicil in which the reference occurs as to whether they can identify the document referred to, which may be a memorandum, a letter, an account book, &c., and an affidavit of search will be required to show that there is no

other document which could fulfil the terms of the reference.

Should it be held upon the evidence that the document produced is one which should be incorporated, it must be engrossed and registered, and the will is sworn to as "*contained in paper writings marked A. B. &c.*"

If, however, the document to be incorporated be another will which has been proved, and either the executor of both wills is the same person, or the testator himself was the executor of the first will, then the first will is not engrossed and registered with the second, but an affidavit of the fact is made by the executor, and filed, and a memorandum of the fact written in the margin of the engrossment. This is sometimes done in other cases of incorporation.

If there are any vestiges of sealing wax or wafers, or other marks upon a testamentary paper, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and if not produced, its non-production must be accounted for.

The remarks contained in the foregoing portion of this chapter apply equally to wills which are valid *per se*, and to those which are susceptible of being made valid, by the production of the requisite evidence.

There are, however, wills dependent for their validity upon circumstances other than those prescribed by the Wills Act.

These may be divided into two sections—(a) The wills of **Foreign Subjects** domiciled abroad, and (b) the wills of **British Subjects** resident abroad.

First as to wills of Foreign Subjects:

These may or may not have been recognized as valid in the country in which the person making the will was domiciled.

With the exception of Germany, few of the European nations have any judicial recognition of a testamentary document which is analogous to our Probate Law. But since January 1, 1900, a probate practice has been instituted in Germany which is common to the German Empire.

There are, however, certain exceptions from the operation of this law, such as the Hanseatic cities, which still retain their ancient laws regarding testamentary dispositions.

In other European countries different methods of recognizing the validity of a will obtain—the Latin countries being largely governed by the provisions of the Code Napoleon.

In all these cases the Court holds itself bound to recognize here, a will of a foreign subject which has been admitted as valid by the competent authority in the country in which such person was domiciled. Different countries, it is needless to state, have different methods, of not only making, but of recognizing as valid a testamentary disposition.

The Court therefore requires a full statement of all the judicial proceedings with regard to the will in question which have taken place abroad, together with a full copy of the will and codicils (if any) collated with the originals by the person who has the custody of same; and the whole statement certified as true under the seal of either the Court where the will has been proved, or of the notary or other public official in the country in question to whose custody the original testamentary documents have been committed, or in whose books they are registered.

A copy of a copy will under these circumstances is not accepted. Every copy will must be certified to have been collated with the original, and where the original will is not filed abroad, as happens in Russia, where, after official recognition, the will is handed back to the parties interested, the English Court requires the production and filing here of such original.

In cases where any doubt arises as to whether a will is or is not valid by the law of any foreign country; or as to the sufficiency of the evidence furnished by the proceedings for recognition of such will there, further evidence is required on oath from an advocate admitted and practising at the Bar of that country; or a certificate as to the law of the country is accepted under the seal of the embassy of that country in London; and it must also be shown that the deceased died domiciled in that particular country.

Where the *original* will of a foreigner is submitted for probate in England without having been first recognized in the country of his domicile; in addition to swearing in the oath that the testator died domiciled in that particular country, the affidavit of law must be produced as mentioned above.

Where a grant of probate of the will or administration of the estate of a testator has been made in a foreign country to a person other than the person who would be entitled to a grant by English law, several courses are open to the solicitor who is applying for representation here.

He can either extract a grant in favour of the person who by English law would be entitled to it; or upon application to the Registrars, supported by affidavits, showing the facts and swearing to the domicile of the testator, he can obtain a Registrar's order authorizing the issue of a grant to the person who has been entrusted with the administration of the estate of the deceased by the Court having jurisdiction at the place of the testator's domicile at the date of his death; or, upon filing an affidavit by an advocate admitted and practising in such foreign country, stating that the applicant is the person who under the law of that country would be entitled to a grant there, a grant will issue here to the applicant as the person entitled by the law of such foreign country to apply for and obtain administration of the estate of the testator.

As in all these cases, the foreign domicile of the testator is a condition precedent to the making of the Registrar's order, or the issue of a grant "to the person entitled," it is obligatory to swear to such domicile in the oath leading the application. The domicile is then stated in the grant; and in cases where the grant is made to the "person entitled," in lieu of a Registrar's order, a note is written on the engrossment by the Clerk of the Seat and signed by the Registrar to the effect that an affidavit of foreign law has been filed.

Probates granted in British Consular Courts or certified and sealed copies of same are received as conclusive evidence of the validity of a will proved in any such Court, without further evidence, beyond the requirement that it shall be shown that the deceased was domiciled in the country in which the grant issued.

All foreign wills or copies of them and of the proceedings relating to them taken abroad are to be translated by an English Notary Public; and such translation is then submitted to the Clerk of the Seat, who will have to deal with the case, in order that he may decide whether the papers show the will to have been properly recognized abroad, or to state what further evidence will be required, and for him to give directions as to how much of the document submitted is to be included in the probate engrossment. To save time and expense, it is well to bring in the translation for marking before the engrossment is made or the papers prepared.

Secondly, as to the wills of British subjects resident abroad:

Prior to 1861 difficulties frequently arose in proving such wills, because in many cases it could not be shown that the testator's will was valid according to the law of the country where he was domiciled at the time of his death, and in many other cases, the will being in foreign form, was not valid according to English law.

To remove this difficulty an Act was passed, known as 24 & 25 Vict. c. 114, or more shortly as Lord Kingsdown's Act, which came into operation on the 6th August, 1861. The Act is divided into two classes—first, with regard to wills made without the United Kingdom; secondly, with regard to wills made within the United Kingdom.

By the first section of this Act, which is not retrospective, the will of any British subject made *out* of the United Kingdom, whatever might be his domicile at the time of making it, is admitted to probate in England and Ireland, and to confirmation in Scotland, if it is shown to be valid; either

(a) by the law of the place where it was made; or
(b) by the law of the place where the testator was domiciled when making it; or.
(c) by the law of the place where he had his domicile of origin.

The second section of the Act deals with wills of British subjects made *within* the United Kingdom, which are accepted as valid if they are shown to be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made.

The affidavit filed to set up a will under Lord Kingsdown's Act, is known shortly as an "Affidavit of British Status," can be obtained from any law stationer, and must be filled up in accordance with the facts of the case, regard being had as to whether the will was made *out* of the United Kingdom or *within*. A skeleton form of affidavit is given in the Appendix.

Where the testator's domicile of origin was English or Irish, and the will was made abroad and is valid according to the Wills Act; or where the will was made either in England or Ireland and is duly executed, no further evidence than the affidavit of British status is required to set it up; but if in either of those cases the attestation

is defective, the ordinary affidavit of execution will be required.

Where the will is made abroad, in foreign form, and would be invalid by English law, it can be set up by an affidavit of foreign law (see above), showing it to be valid according to the law of the place where it was made; or alternatively, if it can be shown to be valid by the law of the place where the testator was domiciled when making it.

Before we close the consideration of foreign wills, there is yet to be considered the subject of wills made by persons domiciled in the British colonies and dependencies over sea. Exemplifications of the probates of these are received without further question as to validity. But where the original wills are submitted without having been first proved abroad, it is necessary to inquire whether the colony or dependency is one of the many who have adopted for their Probate Law the provisions of the English Wills Acts. At the present time some sixty-three of the British dependencies have conformed to the provisions of the Wills Act; a list of these is subjoined.

Where it is desired to prove a will of a testator domiciled in any one of these it is only necessary to test the will by the ordinary formula of due execution, and where the attestation clause is missing or faulty the will can be duly set up by filing the ordinary affidavit of due execution.

1. The essential provisions of the Imperial Wills Amendment Acts (1 Vict. c. 26 and 15 Vict. c. 24) with regard to the execution of wills, are in force in the following parts of the empire :—

> Antigua, Bahamas, Bermuda, British Columbia, British Guiana, British Honduras, British New Guinea, Caicos, Cayman, Dominica, Ellice, Falkland Isles, Fiji Isles, Friendly Islands, Gambia, Gibraltar, Gilbert Islands, Gold Coast Colony, Grenada, Hong Kong, India, Ireland, Jamaica, Lagos, Leeward

Islands, *Isle of Man (but marriage and birth of child revokes will), Manitoba, Montserrat, Natal, Negri Sembilan, Nevis, *New Brunswick, Newfoundland, New South Wales, New Zealand, Nigeria (Northern and Southern), North-West Territories, Nova Scotia (but as to wills of married women see sect. 16, Wills Act, c. 139†), Ontario (but as to revocation by marriage see sect. 20, Wills Act, 1887†), Pehang, Perak, Phœnix Island, Prince Edward's Island, Quebec, Queensland, St. Christopher, St. Helena, St. Vincent, Selangor, Sierra Leone, Solomon Islands, South Australia, Straits Settlements, Tasmania, *Tobago, Tonga, *Trinidad, Turks Island, Union Island, Victoria, Virgin Islands, and Western Australia, West Pacific High Commission.

2. In the following places the Imperial Acts are partly in force:—

British Guiana. (A will in conformity with 1 Vict. c. 36, s. 9 is valid.)

Guernsey. (Article III. of Law of 1847† is similar to 1 Vict. c. 36, s. 9.)

3. Barbados. The law is that of England prior to 1837, but holograph wills of real estate are good, and wills not holograph require two or more witnesses.

Applications for probate can in any case be made to the Principal Probate Registry, or they can be made at a district probate registry provided the deceased had a fixed place of abode within the district assigned to such district registry.

Unless by leave of the Judge, or by order of two of the Registrars in the Principal Probate Registry, or by the

* In these cases it is necessary that the witnesses should sign in the presence of each other.

† Local Acts.

order of a District Probate Registrar, no probate can issue until the eighth day after the death of the testator.

Probate of a will is granted to the executor or executors named in, or according to the tenor of the will, or to any one or more of them; to executors for life named in the will; or to executors substituted in the will on the death of the executor for life or the determination of his or her office by breach of any particular provision or condition imposed by the will.

Instances of such conditions would be executorship during widowhood, or during residence in England, and the substituted executorship would come into force on the re-marriage of the one, or if the other ceased to reside in England.

No person other than an executor as included under one or other of the above headings can take probate. According to the present state of the law in England, probate will not be granted to a company or other corporate body who may be appointed executors. Such a company by their duly appointed syndic, or by their lawful attorney, take letters of administration with the will annexed, limited until further representation to the estate of the deceased is granted, and all other persons, not being executors, no matter in what character they apply, also take letters of administration with the will annexed.

The will oath.

In every application for probate, an oath setting out all the facts is sworn by the executor or executors applying. This oath states the correct name, address, and addition or occupation of each of the deponents, and if one should be a woman it must furnish her status, *i.e.*, wife of [ ], widow or spinster, as the case may be. Residential addresses should be given in every case possible. Club addresses are not accepted, except in the case of residential clubs.

The oath proceeds to identify the will, together with codicils to the same (if any), as being the true and original

last will and testament, with one or whatever number of codicils there may be, of the deceased, and each testamentary paper is signed or marked by each of the executors, whose signature is countersigned in every case by the commissioner who administers the oath. The absence of swearing to a codicil, or to the number of them if more than one, or of the marking by the deponent and commissioner, would necessitate the return of the papers for correction and re-swearing.

Next in the oath follows the name and address, and addition or status of the deceased. Frequently it happens that the deceased is described in his will, and signs himself, say, "Thomas Robinson," but when the oath to lead the grant is brought in, he is found to be described as "Thomas Robinson, otherwise Thomas Jones." The practice of the registry is averse to giving any grant in names which comprise an alias, and in every such instance very stringent evidence is required by affidavit showing, firstly, the identity of Thomas Robinson with Thomas Jones, and, secondly, the necessity for giving an alias in the grant. Provided the Registrars are satisfied that the identity of the deceased is satisfactorily accounted for, they will admit the necessity for the alias in cases where the affidavit discloses the fact that testator possessed property in both names, such evidence being substantiated by the production of any deeds, stock certificates or bank books from which it is apparent that the alias should be allowed in order to enable the grantee to deal with the estate of the testator in question under both names.

In view of the danger of issuing a grant with an alias which might enable the grantee to deal with two different estates, the privilege of granting an alias is very jealously watched, and the affidavit in support of such an application should very fully disclose all the facts of the case.

Should the deceased be a female, and her status be missing, the papers would be stopped for the defect to be supplied.

Should the deceased at his death be resident at an

address other than that given in the will or codicil, it must be stated in the oath that he formerly resided at the last address by which the testamentary papers can be identified.

The executors then state what is their relationship (if any) to the deceased, and if they are referred to in the will by any words of identification, as "A. B. and C. D., sons of my deceased nephew E. F.," this description should appear in the oath.

It frequently happens that whether by error or by ignorance, names, relationships or words of identification of persons appointed executors by wills or codicils, differ from the descriptions of them presented by the oath, or their appointment may be in such vague terms as to necessitate further evidence of identity.

Typical of such cases may be cited an appointment in such terms as

> "I appoint **John James** Smith, of 9, Colne Street, Colchester, my nephew, executor of this my will."

James John Smith applies, and states that he is the nephew of testator's wife. In such a case an affidavit is required from someone who can speak to the facts, to the effect that the testator had no nephew named John James Smith; that at the date of the will there was no person resident at 9, Colne Street, Colchester, having the surname of Smith and the Christian names of John and James, other than the said James John Smith, who is a nephew of the testator's wife, and has always been referred to by the testator as his nephew. In such a case the grant would issue to "James John Smith, in the will called John James Smith, and erroneously called the nephew of the deceased."

It is of frequent occurrence that the testator appoints "my wife sole executrix," and that nowhere in the will does he refer to her by name. In such cases the executrix should swear that she is the widow and relict, and that

she was the lawful wife of the deceased at the date of the will.

Having identified himself with the appointment in the will or codicil, as the case may be, the executor goes on to swear that—

"I am the sole executor named in the will of the deceased;" or if there be more than one executor appointed and the others are dead,
"the surviving executor named in the will," or
"one of the executors named in the second codicil,"

in accordance with the facts of each particular case.

Failure to state these facts correctly, or to clear off any other executors who may have been appointed, will cause delay in the issue of the grant; for although there is no priority among executors, each having an equal right and each being entitled to a grant of probate or double probate upon application, the Court requires that executors named but not applying shall be cleared off, by it being shown either that they are dead, or that they have filed a renunciation of probate, or that power is to be reserved to them to come in and prove the will at some future time. When executors renounce they declare that they have not intermeddled nor will intermeddle in the estate of the deceased, and that they renounce probate and execution of the will [and codicils, if any]. This renunciation is not upon oath, but is attested by a credible witness. Disclaimers by deed are not accepted as renunciations unless they contain the statement that the executor concerned has not intermeddled. When power is reserved to an executor to prove at some later date, the solicitor files with the papers a copy of the assets account contained in the Inland Revenue affidavit together with any schedules of assets, personal or real, the totals of which are included in the grant. This is filed in the Probate Registry, either principal or district, where the grant is taken, and can be

referred to by the executor to whom power to prove is reserved when he applies for double probate.

Having sworn that he will well and faithfully administer the estate, the executor proceeds to swear to the amount of such estate, and this should be the **gross** total of the personal and free real estate of the testator in the United Kingdom; a very common error is the insertion of the **net** amount of the estate. Neither copyholds nor foreign property (*not* transferable in England) should be included in the gross total in the **oath**; copyholds and foreign property are properly included in the Inland Revenue affidavit on the forms applicable to those cases, and duty is charged upon them by the Inland Revenue authorities according to the circumstances of the domicile of the deceased, which duty is stated upon the grant of probate or administration will issued; but the amount of such estate should not be sworn to in the oath, nor will it appear in the grant.

Where the deceased possessed property in England and Scotland, although that fact is disclosed by the Inland Revenue affidavit, and the amount is included both in that affidavit and in the will oath, and estate duty is paid upon it, the grant will not entitle the legal personal representative of the deceased to deal with such property in Scotland until it has been re-sealed there. A condition precedent to this re-sealing is that the English grant shall contain a supplementary certificate signed by the Registrar to the effect "that the deceased died domiciled in England," and in order that this certificate, which entitles the grant to recognition for re-sealing by the Scotch Court, may be written on the grant, it is first requisite that the oath shall contain the statement of the deceased's domicile, and the further statement that the estate disclosed is the total of the estate "within the United Kingdom," and the amount of the Scotch property must be sworn to in the Inland Revenue affidavit.

In cases where it is desired to re-seal the English grant in Ireland, the note of domicile is **not** required, the

Probate Law of England and Ireland being analogous, but the probate is accompanied by a certificate obtained from the Estate Duty Office, to the effect that duty has been paid to cover all the estate of the deceased within the United Kingdom, and it further states what proportion of the estate is in Ireland.

The oath being filled up and ready for swearing, the solicitor should see that the signature of the deponent agrees with the recital of his name in the first clause of the oath. The oath is sworn before a commissioner for oaths in England and Wales, and out of England and Wales before any person who is authorized to administer an oath.

The subscription of the jurat by any person before whom the oath has been sworn abroad is held by this Court to be sufficient evidence of his authority to administer the oath.

The Oaths Act, 1889, s. 2, enumerates the persons who are qualified to administer oaths in England, which will be recognized in the English Courts; but exception must be made in the case of Germany, in which country, according to German law, an oath can only be administered by a German subject (see *Re* Fawcus, P. D. 241).

Scotland, Ireland, the Channel Islands, and the Isle of Man are for the purposes of the Oaths Act regarded as foreign countries.

All alterations in the oath must be initialled by the commissioner, but any words or figures written upon an erasure can only be validated by being referred to in the jurat or by being rewritten and signed or initialled in the margin of the affidavit by the officer taking such affidavit. Rule 53 of 1882, *q.v.* in Appendix.

The commissioner fills up the jurat on the oath, stating by whom, when and where the oath was sworn. Care should be taken that the words "before me" at the end of the jurat are not omitted.

The commissioner must not be a member of the firm of solicitors extracting the grant.

The engrossment for probate and fiat copies and copies to assist.

The engrossment is made on special paper of a particular size, or on parchment cut to the same size. If the length of the will necessitates the employment of more than one sheet they must not be superimposed, but placed one within the other. Engrossments made on sheets superimposed will be refused, and will have to be re-engrossed.

If the will contains no alterations or interlineations, or if such alterations or interlineations are shown by the affidavit of execution to have been made previously to execution, the will is engrossed fair as altered.

If from the affidavit of execution it appears that all of the alterations were made *after* execution, or that some were made before and some after, those which were made before execution are engrossed fair; those made subsequently are omitted. Where any engrossment is made of a will in which the alterations have been made subsequently to execution, the original wording of the will is restored for the engrossment, and a separate fair copy of the will on paper, or of that portion of it which contains the alterations, restoring the original wording as it will issue for probate, is furnished by the solicitor. This is termed a fiat copy, and upon it the Registrar will sign a fiat written by the Clerk of the Seat to the effect: "Let probate of the will of the within named [ ] deceased issue in accordance with this copy." The extra fees in respect of the fiat copy are 3*d.* per folio of ninety words for collating with the original will, and 5*s.* the fee for the Registrar's fiat.

In cases where the will is illegibly written, or where there is much misspelling, or many alterations which, however, are duly authenticated, a similar plain copy of the will is filed, but in this case is *not* signed by the Registrar. This is termed a copy to assist registration, or more shortly "copy to assist," and equally with the fiat copy is for the guidance of the registering clerk, who will subsequently make the registered copy of the will.

The extra fee charged for the copy to assist is 3*d.* per folio for collating.

As a very large proportion of the cases which are stopped by the Clerk of the Seat is due to faulty engrossing, too much care cannot be paid by the solicitor to the accuracy of his engrossment.

Any *erasure* in an engrossment is fatal to the sheet on which it occurs, and no alterations are permitted either in the name or signature of the testator or of the executors or of legatees; or in the date of the will or codicil; or in the amount of a legacy, or the interlineation of a legacy, or in any words which would or might change the context of any portion of the document.

In any of these cases, re-engrossment, possibly of the whole, and certainly of the faulty portion, will be required, and in addition to the delay which will necessarily occur in issuing the grant, a further fee of 3*d.* per folio is charged for every folio which has to be re-examined by the Examiner.

Reason of delay.

Where more than three years have elapsed between the date of the death and the date of swearing the oath to lead the grant, an explanation is required of the delay which has occurred in making the application; this is comprised in a document which is termed "the Reason of Delay," and a form of which will be found in the Appendix, and which can be obtained from any law stationer. It should embrace three facts: a statement of the whole of the property of the deceased at the date of his death; the reason why an application has not been previously made; and the reason why the grant is now required. Care should be taken in supplying the necessary particulars, or the case may be stopped for the Reason to be amended.

The Inland Revenue affidavit.

The last document to which reference is required is the Inland Revenue affidavit. This is prepared by the solicitor under the guidance of the Estate Duty authorities, and is brought in with the papers duly sworn, and with the certificate duly endorsed and signed by an Inland Revenue

officer that the correct duty has been charged and paid. It is not a document which belongs to the Probate Division, and is only filed with the papers to lead the grant, in order to enable the Clerk of the Seat to check the amount sworn to in the oath, and to enable him to fill up the certificate on the grant for the Registrar's signature, stating the amount of the estate and of the duty which has been paid, and the rate of the same. Subsequently the Inland Revenue affidavit is returned by the Registrar to the Estate Duty Office, where it is filed.

Lodging an application.

Having prepared all the necessary papers, and the applicant having been sworn to same, the solicitor will leave them with the receiver of papers at the Principal Probate Registry, or with the official appointed to receive papers by the district registrar, when the application is made at a district registry.

The receiver of papers will make out the fee sheet in accordance with the list of fees and *ad valorem* fees which will be found in the Appendix.

2*s.* is charged for every affidavit filed, except the executor's oath and the affidavit for Inland Revenue, which are filed free. Bonds given either by the administrator (with will), or by an administrator in the case of an intestacy, are filed free of charge.

2*s.* 6*d.* is charged for filing any document other than an affidavit or affirmation.

1*s.* 6*d.* per folio of ninety words is charged for collating the engrossment with the original will, and for subsequently registering the will in the official books. The minimum charge is for three folios, or 4*s.* 6*d.*

6*d.* per folio is charged for collating *facsimile* writing (with a minimum fee of 1*s.*), and a special fee is assessed by the Examiner and is charged for collating any copy plan, or map which may be included in the engrossment.

3*d.* per folio is charged for collating all subsequent re-engrossments, fiat copies, copies to assist, or duplicate wills.

6*d.* per annum is charged for the period from the testator's death to the date of the application, for the search made in the Registry to ascertain whether any previous application for a grant has been made.

[N.B.—No search fee is charged in the case of any second or subsequent grant, except in the case of a revoked grant, when a search is made from the date of the revocation, and the same fee of 6*d.* per annum is charged from that date to the date of the application.

In all cases of second or subsequent grants a non-official copy of the record of the last previous grant must be bespoken in the Record Keeper's Department and lodged with the other papers. Omission in furnishing the copy record will cause delay in issuing the grant. The charge for it is 3*s.* 6*d.* (1*s.* for the search and 2*s.* 6*d.* for the copy), and it is handed out to the solicitor with the grant.]

The fixed duty of 1*l.* 10*s.* or 2*l.* 10*s.* covers also all Legacy and Succession Duties.

Where the total amount of the estate wherever situate of the deceased, who has died on or since the 1st June, 1881, does not exceed 300*l.*, and no deduction of debts due from the deceased is claimed, the applicant, by the provisions of the 44 Vict. c. 12, s. 33, has the privilege of paying a fixed estate duty of 30*s.*, which is paid in fee stamps and affixed to the Inland Revenue affidavit, and a fixed Court fee of 15*s.*, which is placed in fee stamps on the fee sheet issued by the receiver. This 15*s.* is in lieu of the detailed items and the *ad valorem* duty referred to above, and it covers every expense in Court fees which may be occasioned by the application, including a reference if need be to the Judge in Chambers. This provision has been extended by the 16th sect., sub-sects. 1, 2 and 5 of the 57 & 58 Vict. c. 30, which provides that if the amount of the estate does not exceed 500*l.* without deduction of debts, the fixed estate duty shall be 2*l.* 10*s.*, and the same Court fee of 15*s.* is to be paid; and by the latter Act, sect. 5, it is provided that interest on such fixed estate duty, whether 30*s.* or 50*s.*, is chargeable where the duty is

not paid within twelve months after the death of the deceased.

Whenever the applicant takes the grant as the legal personal representative of some other deceased person, the grant under which he derives his interest must be produced for the inspection of the Clerk of the Seat, who will note the fact of its production upon the oath and hand the document, known as the leading grant, back to the solicitor. No fee is payable in respect of the leading grant, but a fee of 2*s.* 6*d.* is charged for placing upon the record of a first grant a note of the issue of any second or subsequent grant, and in cases where the first grant was in a district registry, an additional fee of 1*s.* is charged for sending to the district registry the notice of the later grant, and an *ad valorem* fee is charged in accordance with the schedule in the Appendix.

The receiver of papers collects from the solicitor the total of the fees chargeable, which is placed in fee stamps on the fly leaf of the fee sheet. Any fees payable in respect of any other documents subsequently required by the Clerk of the Seat to complete the validity of the application are also paid in fee stamps and are annexed to the same fly sheet. The receiver then fills up and hands to the solicitor a receipt for the papers lodged. Care should be taken to preserve this receipt, as no enquiries subsequently made by the solicitor as to the papers lodged will be recognized unless the receipt is produced, and when the grant is sealed it will be given out to any person who hands to the sealer such receipt.

If the receipt should be lost or mislaid immediate notice should be given to the sealer in order to prevent the grant falling into wrong hands.

The will engrossment and papers are then remitted next day by the receiver of papers to the examiner's department in order that the will may be collated with the engrossment. In cases of second or subsequent grants in which the will has been already proved and is filed in the

Principal Probate Registry the solicitor must apply in the Record Keeper's Department to have the original will looked up in the strong rooms and sent upstairs to the examiner for the purpose of collating. The fee charged for the search ticket for looking up the original will is 1*s*.

Having examined the original against the engrossment the examiner forwards all the papers the next day to the Clerk of the Seat. If he finds them in order he causes the grant of probate to be written and annexed to the engrossment and a record or act of the grant to be made, which is subsequently filed in the record keeper's department in bound volumes. The Clerk of the Seat then forwards the grant, the will oath, the fee sheet, and the Inland Revenue affidavit to the Registrar, who, if he finds the application to be correct and the grant in order, signs same, forwards the Inland Revenue affidavit to the estate duty office, and despatches the grant, the will oath, and the fee sheet, together with the copy record of the former grant (if the present should be a second or subsequent application) to the sealing department, where the official seal of the Court is stamped on the grant. A note of the grant and of the fees paid upon it and of the solicitor's name is made in the sealer's books, and the following day after 12.30 p.m. the grant is handed out to any one producing the receipt given by the receiver.

CHAPTER II.

ADMINISTRATIONS WITH THE WILL ANNEXED.

All that has been stated in the previous chapter with regard to wills brought in for probate, both English and foreign, applies with equal force to every application for a grant of administration with will annexed. In each case the validity of the will is tested and decided in the same way. It remains chiefly to consider the priorities of the persons who are entitled to the latter grant, and to note any differences which occur in the practical part of the application.

Power of attorney.

1st. The attorney of the executors or of one or more of them, if the executors are resident *out of England*, is entitled to a grant. He files a power of attorney, which should state the facts of the case, and that the attorney is authorized to apply for and obtain in England letters of administration with the will annexed of the estate of the deceased. If the power is limited to this purpose solely, and is not a general power of attorney, it is exempt from stamp duty. Should it be a general power, it is liable to a stamp duty of 10*s*. It is not necessary that the power should be notarially attested. Attestation by one credible witness is sufficient.

Oath.

The attorney, under the authority of his power, swears the oath to lead the grant, which is written upon a proper form for administration with will. All the requirements enumerated in the case of the will oath equally apply to

the administration will oath. It is requisite to state in the oath that the executor whom the attorney represents, and also any other executors whom he does *not* represent, are all resident out of England, for if he were the attorney of the only one of the executors who was abroad, the others being resident in England, a grant would be refused to him as the attorney of the non-resident executor.

Where the executor is a minor or an infant when the grant is applied for, administration with will annexed is granted to his guardian, whether testamentary, or elected, or assigned, according to the facts of the case, which are shown in the oath, and the grant is made for the use and benefit of the executor and until he shall attain twenty-one years.

Where the minor is over seven years of age he elects his next of kin as guardian, or on the renunciation by the next of kin of their guardianship he can elect any person to take the grant on his behalf.

When the executor is an infant, *i.e.*, *under* seven years of age, he cannot elect, but a guardian is assigned to him by Registrar's order on an application by summons supported by the requisite affidavits of fact.

The lawful mother of a minor or infant is the only person who does not require to be elected, as by the Guardianship of Infants Act, 1886, she, on the death of the father of the infant or minor, is constituted the "lawful guardian," either alone when no guardian has been appointed by the will of the father or jointly with that guardian, should there be one. And power is also given her by her will to appoint a testamentary guardian of such child to act on the death of the father and herself. It is to be noted, however, that where the minor is a female and married, the husband has a prior right to any one to take a grant on her behalf, and therefore before the minor elects any one else or the mother could take on her behalf under the Act quoted, the husband of the

minor must renounce his right, unless he also be a minor, in which event a stranger may be elected.

The guardian files a declaration on oath of the nature and value of the estate, unless the amount of such estate is below 20*l.*, when the declaration is not required. If the executor is a lunatic or a person of unsound mind, administration with will is granted to his committee in lunacy, if any, or failing a committee, to the person appointed by an order in lunacy to apply for such a grant. If neither such exist, a grant would issue either to the residuary legatee or devisee under the will, or failing such, in the following priorities: (a) to the husband or wife, or (b) to the next of kin, or if there be real estate, to the heir-at-law, of the executor; in either case the grant is limited for the use and benefit of the lunatic or person of unsound mind, either during his lunacy or until he shall become of sound mind, as the facts may be. In all these cases where a grant is made for the use and benefit of a person of unsound mind, not so found by inquisition in lunacy, it is necessary to file an affidavit or affidavits (in practice usually a joint one) by the doctor in charge of the patient and the nurse in whose care he remains, showing on oath his mental condition. The grantee files the declaration of the estate referred to above, and in addition the sureties to the bond file the affidavit of justification, *i.e.*, they swear that after payment of all their just debts each of them is well and truly worth in real and personal estate a sum equal in amount to the gross total of the estate to be administered.

Where no executor is appointed, or should there be such named in the will, but who has either predeceased the testator or has renounced probate, administration with will annexed is granted—

1st, to the person or persons who hold the residue of the estate, whether real or personal, *in trust*.

2nd, to the person or persons entitled for life to the income of the residuary real or personal estate.

3rd, to the person or persons, or one of them, entitled to the corpus of the real or personal estate upon the extinction of the life interest, as in the last preceding paragraph.

4th, if the testator has disposed of the residue of his estate to more persons than one, and one of such persons has died in his lifetime, and such share of the residue has lapsed, a grant is made indifferently to either of the surviving residuary legatees or to the next of kin in respect of the latter's interest in the undisposed-of share of residue.

5th, to the legal personal representative of any such person absolutely entitled to a share in the corpus who has survived the testator, but died without taking a grant to his estate; provided that in this last instance it is shown in the oath that all other persons entitled to share in such corpus are cleared off as being dead or as having renounced. This is a condition precedent to a grant being made to the personal representative of any one of them.

In applying for a grant under any of these headings, the practitioner should be careful to clear off, in the order given, any person having a prior right to the grant.

Where the absolute ultimate interest in the corpus is preceded only by an interest *in trust*, the persons taking such absolute interest are termed the residuary legatees or residuary devisees named in the will.

Where such ultimate absolute interest is preceded by a life interest in such residue, the absolute interest is taken *by substitution*, *i.e.*, the residuary legatee or devisee substituted in the will.

Where the residue, whether real or personal, is not given by the will specifically to any person or persons, but to a class, as "to my children," or "to my brothers," &c., the applicant is always required to swear in accordance with the particular facts, that he or she is a "natural and lawful child of the testator (or natural and lawful brother,

as the case may be), and as such one of the residuary legatees named in the will," and this description of the grantee will so appear in the grant.

Should the residuary legatee or devisee on whose behalf the application is made be a minor, or of unsound mind, the same requirements apply as when application is made on behalf of a minor or lunatic executor.

Where the will contains no appointment of executor, nor disposition of the residue, or if there should be such and they have all renounced, the grant is made according to the Statute of Distributions and the Land Transfer Act, as it would be in the case of an intestacy, *i.e.*, to the lawful husband or the lawful widow and relict in priority, and on equal terms to the next of kin and the heir-at-law (where real estate is involved). Should there be real estate and should the applicant have only a derivative interest or an interest in distribution, the heir-at-law, as well as the husband or widow and next of kin, would have to be cleared off before such a grant could issue.

Where residuary legatees have renounced their right, a grant is made indifferently and according to the priority of application, either to the next of kin or the heir-at-law, or a creditor or a specific legatee under the will.

Under the existing state of the law in England, grants are not yet made to corporations as executors. Should such be appointed as executors they delegate their powers to a syndic or to an attorney, either of whom takes administration (with will) for the use and benefit of the company, and until further representation to the estate of the deceased be granted.

In all simple cases of administration (with will annexed) in which no special affidavits are required, the usual papers required are the oath, the engrossment, the Inland Revenue affidavit, the bond (for details of which see "Bonds" on p. 293 *et seq.*). Supplementary papers which may be required, according to the necessities of the case,

would be affidavits of law as to validity of will or of due execution, or as to alterations, and power of attorney, copy Inland Revenue account, reasons of delay, affidavit as to heirship. These, where they are required, should be furnished by the solicitor before the papers are lodged, or delay will inevitably occur for their production.

The papers, when complete, are lodged in the same manner, and the grant is extracted in the same way, as in the case of an application for probate (see p. 274).

CHAPTER III.

AS TO GRANTS OF ADMINISTRATION.

P. R., N.-C. R. 1.

By Rule 1, application for grants of letters of administration may be made in all cases at the Principal Registry. Applications can only be made in a District Probate Registry in cases where it can be sworn that the deceased had a fixed place of abode within the district of such District Registry.

Rr. 2 and 3.

Rules 2 and 3 apply to grants of letters of administration as well as to grants of probate, and they state that applications may be made either by a solicitor, or by an attorney, or in person by executors, or by parties entitled to a grant of administration; but no application can be received through the post, nor can correspondence relative to a case already lodged be carried on by post. And after all the inquiries which they may deem necessary have been satisfactorily answered, the Registrars will afford as great facility as they can for the obtaining of grants consistent with a due regard for the prevention of error or fraud.

Time for issuing administration.

By Rule 44, no letters of administration are to issue for fourteen days after the death of the deceased, except by the direction of the Judge or by order of two of the Registrars.

In practice, this means that the earliest date upon which a grant of administration can issue is the fifteenth day after the date of death of the intestate.

By Rule 45, where administration is applied for after three years from the death of the deceased, the reason of the delay must be certified to the Registrars, who may require such proof of the alleged cause of delay as they may see fit. Reason of delay.

In practice the reason of delay is accepted from the applicant alone in the form of an affidavit; but if it is given in the form of a certificate signed by the applicant, it must be countersigned by the solicitor, who states that "he believes the above to be true." Three cardinal facts must be stated in the "reason"—(1) a statement of the property of the intestate; (2) why the grant has not been applied for before; and (3) why the grant is now required. This form should be rigidly complied with, or delay may be occasioned.

By Rule 46, all letters of administration issued from the Principal Registry are to be filled up there. R. 46.

By Rule 48, the Registrars may, at their discretion, require proof in addition to the oath of the administrator, of the identity of the deceased and of the party applying for the grant. Identity of deceased. R. 48.

In every application for administration in which the name of the deceased is given under an alias, a very strong affidavit will be required before the grant is allowed to issue, showing (1) the identity of the one person under two names, and (2) the necessity for the grant to be made in two names.

By Rule 28, where administration is applied for by one or some of the next of kin only, there being other next of kin equally entitled, the Registrars may require proof by affidavit or statutory declaration that due notice has been given to such other next of kin. Next of kin. R. 28.

Unless exceptional circumstances are shown which may excite suspicion of *mala fides*, this rule is held largely in abeyance, and a grant issues to the first of the next of kin applying; but where application is made separately by two of the next of kin, no grant will issue until one of the

applications is withdrawn, or until the two persons applying agree to take a joint grant. Thus, two such applications being entered at the same time, possibly one at the Principal Probate Registry and one at a District Probate Registry, would operate as a caveat to any grant being issued to either applicant until the above conditions are fulfilled.

Who are next of kin.

Errors so frequently occur in describing parties as the "next of kin" or "one of the next of kin" of the deceased, who possess no title to such description, that it cannot be too clearly understood that, for administration purposes, the term "next of kin" applies only to the nearest blood relations living at the date of the death of the deceased.

Should the "lawful husband" or the lawful widow and relict of the intestate be described in the oath as being "next of kin," the oath would be stopped by the Clerk of the Seat to be re-sworn.

The recognized forms of stating the character of an applicant for a grant of administration and of clearing off prior interests may be concisely stated here:—

In every case it must be stated that the deceased *died intestate*, a bachelor, a spinster, a widow or a widower.

(1) Where the wife of a man dies intestate the husband is described as—*the lawful husband.*

(2) Where the husband dies intestate his widow comes as—*the lawful widow and relict.*

(3) Where the deceased died intestate a bachelor or spinster, *or* a widower or widow without child, if the father applies he is described as—*the natural and lawful father and next of kin.*

(4) In a similar case where the deceased died intestate a bachelor or spinster without father, *or* widower or widow without child or father, and the mother applies she is described as—*the natural and lawful mother and only next of kin.*

(5) Where deceased died intestate a widower or widow, *or* the lawful widow and relict has duly renounced the letters of administration of the personal estate of the said deceased, *or* the lawful widow and relict of the said deceased died without taking letters of administration, *or* has been duly cited and not apppeared, *or* is a lunatic or person of unsound mind, a grant would issue to—*the natural and lawful child and one of the* (*or only*) *next of kin.*

(6) Where deceased died intestate, a widower or widow without child, or clear off widow as in No. 5, a grant would be made to—*the lawful grandson and one of the* (*or only*) *next of kin.*

(7) Where deceased died intestate, a widower or widow, and the natural and lawful child or children have survived the intestate and have either died without taking a grant, or have renounced it, a grant will be made to a grandchild as one of the persons entitled in distribution upon it being shown in the oath that such person is a natural and lawful child of a natural and lawful child of the intestate who predeceased him.

(8) Administration will be granted to—*the natural and lawful brother or sister and one of the* (*or only*) *next of kin*—

or to the natural and lawful brother or sister by the half-blood and one of the (*or only*) *next of kin*—

where deceased died intestate a bachelor or spinster without parent,—*or* widower or widow without child or parent,—Or clear off widow, as in No. 5;

(9) *or to the lawful grandfather or grandmother, and one of the* (*or only*) *next of kin*—

where deceased died intestate a bachelor or spinster without father or mother, brother

or sister,—*or* widower or widow, without child or father, or mother, &c.;

(10) *or to the lawful nephew or niece and one of the* (*or only*) *next of kin*—

where deceased died intestate a bachelor or spinster without parent, brother or sister,—*or* widower or widow without child or parent, &c.;

(11) *or to the lawful nephew or niece and one of the persons entitled in distribution*—

where deceased died intestate a bachelor or spinster without parent,—*or* widower or widow without child or parent—the natural and lawful brother and only next of kin having, &c., as in No. 7; *and that* applicant is the lawful nephew, &c., being the natural lawful son of ——, whilst living the natural and lawful brother of the said deceased who died on the —— day of ——, in his (deceased's) lifetime;

(12) *or to the lawful uncle or aunt and one of the* (*or only*) *next of kin*—

where deceased died intestate a bachelor or spinster without parent, brother, or sister,—*or* widower or widow without child, &c.;

(13) *or to the lawful cousin-german and one of the* (*or only*) *next of kin*—

where deceased died intestate a bachelor or spinster without parent, brother or sister, uncle or aunt, nephew or niece,—*or* widower or widow without child, &c.;

(14) *or to the lawful cousin-german, once removed, and one of the* (*or only*) *next of kin*—

if deceased died intestate a bachelor or spinster without parent, brother or sister, uncle or aunt, nephew or niece, or cousin-german,—*or* widower or widow without child, &c.;

(15) *or to the lawful second cousin or lawful first cousin twice removed and one of the* (*or only*) *next of kin*—
if deceased died intestate a bachelor or spinster without parent, brother or sister, uncle or aunt, nephew or niece, cousin-german, or cousin-german once removed,—*or* widower or widow without child, &c.;

(16) *or to the lawful first cousin thrice removed or the lawful second cousin once removed;*

(17) *or to the lawful first cousin four times removed or the lawful second cousin twice removed or the lawful third cousins;*

(18) *or to the lawful first cousin five times removed, the lawful second cousin three times removed, or the lawful third cousin once removed.*

*** When applicant is of class 18, clear off classes 16 and 17 in addition to class 15.

By a recent direction of the Registrars dated 26th October, 1905, in all cases where it is necessary to clear off a person who would have been entitled to, but has died without taking a grant, it should appear on the face of the grant (and consequently must be sworn to in the oath to lead the grant) that such person has died without having taken letters of administration, or as the case may be.

Probate Rules. P. R., N.-C. R. 29.

By Rule 29, no limited grants of administration are to issue until every person entitled to the general grant has consented or renounced, or been cited and failed to appear.

Limited grant. General grant. R. 30.

And by Rule 30, no person entitled to a general grant of administration will be permitted to take a limited grant.

Renunciation. R. 50.

By Rule 50, no person renouncing letters of administration to the personal estate of a deceased person in one character is to be allowed to take representation to the same deceased in another character.

Except as the guardian of minors or infants.

These rules, however, contain the words "except under the direction of the Judge." Any application, therefore, to vary any of these provisions must be made before the Court on motion.

R. 31. C. P. Act, 1857, s. 73.

By Rule 31, whenever an administrator is appointed under the Court of Probate Act, 1857, sect. 73, the nature of his appointment "is to be made plainly to appear in the oath of the administrator in the letters of administration and in the administration bond."

Administrators abroad. R. 32.

By Rule 32, in the case of a person residing out of England, administration may be granted to his attorney acting under a power of attorney.

Executors and administrators abroad.

Persons entitled to represent the deceased, being abroad may take the grant themselves, the necessary papers being sent to them to depose to; or they may authorise someone as their attorney to take a grant for their use and benefit until they shall apply and obtain a grant.

A grant will be made to the attorney of *one* of the next of kin, if such person is resident abroad, without reference to any other of the next of kin; and the grant is limited until the person giving the power of attorney applies for and obtains a grant to himself; but where two or more persons join in giving the power, the grant will be limited until they all apply.

Guardians of minors and infants under 7. R. 33.

By Rule 33, grants of administration may be made to the guardians of minors and infants, and elections by minors of their next of kin (or next friend) are required; but proxies accepting such guardianships and assignments of guardians are dispensed with.

In all cases where a grant is applied for, for the use and benefit of minors or infants, where the intestate has died since 1 January, 1898, the interest of the heir-at-law (who, if there were real estate, would have a prior claim to the grant) must be cleared off, either by stating that there is no real estate or that the heir-at-law has renounced or that one of such minors or infants is also the heir-at-

law. In the two latter cases a special affidavit showing how such person is heir-at-law must be filed.

The following instructions issued to the officers of the Principal and District Probate Registries furnish a concise statement of the effect which the Land Transfer Act has had upon the common form practice of the Probate Division, and show clearly how far the interests of the real estate, or rather of the heir-at-law, are to be considered when making grants of administration or of administration with will annexed.

LAND TRANSFER ACT, 1897.

Instructions to the Officers of the Principal and District Probate Registries.

1. If the deceased did not die possessed of any real estate, the Act does not apply. If it be necessary to clear off a prior right that would exist if there were real estate, it should be done by a statement in the oath (which should also be inserted in the grant) that "the deceased did not die possessed of real estate."

2. A residuary legatee and a residuary devisee are equally entitled to a grant.

3. Where there is a residuary devisee in trust, he should be cleared off before a grant can be made to a residuary legatee, and where there is a residuary legatee in trust, he should be cleared off before a grant can be made to a residuary devisee.

4. The next of kin and heir-at-law are equally entitled to a grant. [But see No. 8.]

5. If there be no executor or residuary legatee, a grant should not be made to a next of kin without clearing off the residuary devisee, and if there be no executor or residuary devisee, a grant should not be made to the heir-at-law without clearing off the residuary legatee. If a next of kin *claim* to be residuary legatee, the residuary devisee must be cleared off.

6. A grant should not be made to the representative of a deceased residuary legatee without clearing off the residuary devisee.

7. The prior right of the husband or widow of an intestate to a grant is not affected by the Act.

8. Although the next of kin and heir-at-law are equally entitled to a grant, yet, in the case of the renunciation of the husband of an

intestate, the heir-at-law should be cleared off before a grant is made to the next of kin (who has no interest in the estate).

9. But on the renunciation of the widow of an intestate, it is not necessary to clear off the heir-at-law before making a grant to the next of kin.

10. On the renunciation of the husband of an intestate, a grant should not be made to the husband's receiver in bankruptcy without clearing off the heir-at-law.

11. A grant should not be made to a person who (though not one of the next of kin) is entitled in distribution to the personal estate, without clearing off the heir-at-law as well as the next of kin of the intestate.

12. A grant should not be made to the representative of a next of kin of an intestate without clearing off the heir-at-law.

13. Guardians of minors and infants are not entitled to a grant without clearing off all persons of age equally entitled with such minors and infants, whether as interested in real or personal estate.

14. A grant will not be made to a person for the use of a lunatic without clearing off all other persons equally entitled with the lunatic, whether as having an interest in real or personal estate.

15. A person acting under a power of attorney has the same equality and priority as the donor of the power would have if applying personally.

16. When a grant is made to an heir-at-law, his relationship to the deceased should not appear in the grant.

17. The value of any real estate in Scotland or Ireland accounted for in the Inland Revenue affidavit should not be included in the oath or certificate on the grant.

18. Bonds are liable to duty (5*s.*) unless the *gross* value of the real and personal estate to be dealt with by the administrator does not exceed 100*l.*

19. Where the gross value of the personal estate and the annual value of the real estate together do not exceed 50*l.*, one surety to the bond is sufficient, although the total gross values of the real and personal estate exceed that sum.

20. The foregoing instructions are to be considered provisional. Should any case arise in which a departure from them might seem to be expedient, such case should be referred to the Registrars of the Principal Registry.

The mother being the lawful guardian by "Guardian Act" need not be elected. Vide supra, *p.* 277.

Declarations on oath of the estate of the intestate are required from all persons taking grants for the use and benefit of minors and infants, except where the value of the estate of the intestate does not exceed 20*l.*

By Rule 34, where an infant, being the only person entitled to a grant, has neither a testamentary guardian nor a guardian appointed by the Chancery Division, a guardian must be assigned by order of the Judge or one of the Registrars.

Probate Rules. P. R., N.-C. R. 34.

The Registrar's order is to be founded on an affidavit showing that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his or her right, and is a consenting party to the order, or has been cited, and that the proposed guardian is ready to undertake the guardianship.

Rule 35 empowers guardians elected by minors (in cases where there are both minors and infants) to act also for the infants **without the above order when the object in view is to take a grant.**

Guardians of minors to act for infants. R. 35.

On the other hand, when the object is to *renounce* a grant a guardian must **be specially assigned to the infants by the order of a Judge or a Registrar.**

The party desiring to be appointed guardian to the infant files an affidavit.

Guardian to infant.

His solicitors then prepare an order which is signed by the Registrar.

Fees payable: filing affidavit, 2*s.*; Registrar's order, 2*s.* 6*d.*

In all administrations of a special character the recitals in the oath and in the grant must be framed in accordance with the facts of the case. The common practice in such cases, and in cases of second or subsequent grants, is to submit a draft statement of the facts in the form of an oath to the Clerk of the Seat, who will settle same before it is engrossed and sworn. Fee for settling, 2*s.* 6*d.*, and 3*d.* per folio for perusing any necessary deeds and papers.

R. 47. By Rule 47, the usual oath of administrators is to be subscribed and sworn by them as an affidavit, and then filed in the registry.

No known relation. R. 75. By Rule 75, "In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's procurator-general (or in case the deceased died domiciled within the duchy of Lancaster, to the solicitor for the duchy in London), in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take."

Probate Rules. P. R., N.-C

As in such cases any real estate which the intestate may have possessed would escheat to the Crown without a grant, real estate need not be cleared off, and the grant will issue for the personal estate only, and this applies equally to estates of bastards and to those of persons who die without any known relation.

R. 76. By Rule 76, in cases of persons dying intestate without any known relations, a citation must be issued against the next of kin (if any) and all other persons having or pretending to have any interest in the estate, and where there is real estate to the heir-at-law also; and this citation must be served on the King's Proctor, or upon the solicitor of the duchy of Lancaster, as the case may be; and the letter from the King's Proctor, in answer to the citation, must be filed.

Bastards. Where a bastard intestate died within the duchy of Cornwall, the Court granted letters of administration of his estate to the solicitor of the duchy for the use and benefit of H.R.H. the Prince of Wales, as Duke of Cornwall. The grant was, however, made without prejudice to the rights of the Crown. Nevertheless, it may be as well in future to serve the citation on the solicitor for the

duchy of Cornwall in cases of bastards dying within its limits.

Where a person dies intestate, and a bachelor or spinster, or without lawful relict or issue, and a bastard, or a bastard without known relation, in the first instance with the consent of the King's Proctor or of the solicitors of the duchies of Cornwall or Lancaster, or a statement that they do not intend to interfere, a grant will be made to a creditor of the intestate. In the case of no known relation, upon the citation and non-appearance of the next of kin, and upon the like consent of the King's Proctor or of the solicitor of the respective duchies, a grant will in like manner be made to a creditor.

In both these cases the creditor, in addition to the special form of creditor's bond, in which he is bound to distribute the estate according to law, "not, however, preferring his own claim," files a declaration on oath of the estate of the intestate, and gives justifying security.

Bonds.

By sect. 81, "Every person, to whom any grant of administration [and N.B. this includes also all grants of administration with will annexed] shall be committed, shall give bond to the Judge of the Court of Probate to enure for the benefit of the Judge for the time being, and, if the Court of Probate, or (in the case of a grant from the District Registry) the District Registrar, shall require, with one or more surety or sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct; provided that it shall not be necessary for the solicitor for the affairs of the Treasury, or the solicitor of the duchy of Lancaster, applying for or obtaining administration to the use or benefit of her Majesty, to give any such bond as aforesaid."

Penalty to bond.

By sect. 82, "Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the Court or District Registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the Court or District Registrar so to do, and the Court or District Registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court or District Registrar shall think reasonable."

Bond cannot be dispensed with.

The Court has no power under any circumstances to dispense with an administration bond save as to applications made by the solicitor for the affairs of H.M. Treasury or of the duchy of Lancaster. These officials file a declaration of the estate in lieu of giving a bond.

Bond, how attested.

By Rule 38, administration bonds are to be attested by an officer of the Principal Registry or by any person authorized to administer oaths under the Probate Acts, 1857, 1858, which must be now understood to mean any person authorized to administer oaths in the Supreme Court, but in no case are they to be attested by the solicitor or agent of the party who executes them.

The signatures of administrators to such bonds, if not taken in the Principal Registry, must be attested by the person administering the oath.

An administrator who is sworn in London may execute the bond either before the Clerk of the Seat in whose province the initial letter of the name of the deceased falls, or before the same person before whom he swears his oath and affidavit.

Execution of bond by sureties.

The sureties may execute the bond before any person qualified to administer oaths, whether he be the same before whom it was executed by the administrator or not.

Number of sureties.

Two sureties to the administration bond are required in all cases of administration or administration with will annexed (except where the husband or his attorney or legal personal representative is the administrator, or where the

estate is sworn at not exceeding fifty pounds, in which case one surety will suffice), and except where the grant is being given by an official of a Government office, when sureties are dispensed with (*vide de la Farque*, 2 Sw. & Tr. 631); and Sir Francis Henry Jeune, the late President, directed that sureties should not be required where the administrator is a receiver in bankruptcy; and the bond is to be given in double the amount of the personal property and double the annual value of any real estate to be dealt with by the administrator by means of the grant, and the alleged value of such property is to be verified by affidavit if required.

Reduced penalty, &c.

If it be desired to reduce the penalty of the usual administration bond, or to dispense with the usual sureties, or to limit the liability of a surety to a particular sum of money, or to be allowed to file more than one bond, application must be made to the Court on motion, or on summons to a Judge at Chambers.

Who may be sureties.

By Rule 41, the Registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons; sureties described as *labourers*, *domestic servants*, *clerks*, and *persons of like occupations*, will be questioned as to sufficiency. Clerks to solicitors extracting the grant are not accepted, and "*gentleman*" is not considered to be a sufficient description. *Females*—whether widows or single—will be accepted as sureties. A married woman tendered as surety is accepted if an affidavit be filed showing that she is possessed of sufficient *separate property* to cover her proportion of the penalty after payment of all her just debts. *Guarantee societies* are accepted as sureties where their articles of incorporation allow them to take such risks. The bond is executed by two of the directors and the secretary, or as such articles direct, and is sealed by their corporate seal in the presence of a commissioner, and the secretary or some other responsible official of the company files an affidavit showing the solvency of the company, stating the amount of their assets, the amount of outstanding claims, and that no petition for winding up the company has been lodged.

Bond of married woman.

The husband of the administratrix may be one of the sureties—if, otherwise, sufficient.

By a direction issued by the President of the Probate Division in May, 1893, sureties to bonds must be resident within the United Kingdom, the Channel Islands, or the Isle of Man, except by leave of a Judge at Chambers.

By the same direction, it was decided that the administrator, resident abroad, of a foreign subject may, if it be proved by affidavit that the deceased left no debts in England, or by leave of a Judge at Chambers, be allowed to give bond with foreign sureties.

Limited or special.

By Rule 40, in all cases of limited or special administrations the bond is to be prepared in the Registry by the Clerk of the Seat. Fee, 2*s.* per folio.

So much of Rule 39 as requires the bond in these cases to be given in double the amount of the property, is not considered to be applicable either to the case of an estate, which, being in settlement, is sworn under a nominal amount, or to an administration limited to carry on proceedings in the Chancery Division.

The amount of stamp on administration bond is 5*s.* in all cases when the amount of effects is over 100*l.* Fees: execution, 1*s.* 6*d.* the first attestation, and 1*s.* for any subsequent one.

Sureties to justify.

Rule 42 provides, that when any person takes a grant of administration, (1) in default of appearance of persons who have been cited but not personally served, or (2) for the use and benefit of a lunatic (unless he be a committee duly appointed), a declaration of the personal estate of the deceased must be filed in the registry, and the sureties to the administration bond must justify.

Bonds, how enforced.

C. P. Act, 1858 (21 & 22 Vict. c. 95), s. 15.

By 21 & 22 Vict. c. 95, s. 15, it is enacted that "bonds given to any archbishop, bishop, or other person exercising testamentary jurisdiction in respect of grants of letters of

administration, made prior to January 11, 1858, or in respect of grants made in pursuance of the Court of Probate Act or of this Act, whether taken under a commission or requisition executed before or after the said 11th of January, shall enure to the benefit of the Judge of the Court of Probate, and, if necessary, shall be put in force in the same manner, and subject to the same rules, so far as the same may be applicable to them, as if they had been given to the Judge of the said Court subsequently to that day."

New practice as to old bonds.

The Court of Probate has no jurisdiction to compel an administrator, who obtained his grant of administration from an Ecclesiastical Court before 11th January, 1858, to file an inventory of the goods of the deceased in the registry of the Court of Probate. By Court of Probate Act, 1857, s. 87, such inventories are returnable only into the Court of Chancery. The course to be adopted in such a case is to move the Court *ex parte* for a rule, calling upon the principal and sureties to show cause why the bond should not be assigned for breach of the condition without further proceedings. The Court may then, upon being satisfied that an inventory has not been returned into the Court of Chancery, order the Registrar to assign the bond (*a*).

The enactments contained in sect. 15 of 21 & 22 Vict. c. 95, are not retrospective, so as to enable the assignee of a bond, given to the ordinary before the passing of the C. P. Act, 1857, to maintain an action commenced by him before the passing of the C. P. Act, 1858 (*b*).

Where an administration bond with two sureties was given to the Bishop of Chester, in 1854, a suit in Chancery was commenced by a creditor of the intestate against his administratrix, and the condition of the bond

(*a*) *Bouverie* v. *Maxwell*, L. R. 1 P. & D. 272; 36 L. J. P. & M. 3; 15 L. T. 137; 15 W. R. 89.

(*b*) *Young* v. *Hughes*, 4 H. & N. 76; 28 L. J. Eq. 161; 5 Jur. N. S. 102.

having been broken, it was ordered, by the Master of the Rolls, that an action should be brought on it against the sureties: the proceedings required by the Ecclesiastical Court to be taken before commencing such action were not completed at the time the Probate Act came into operation, when the testamentary jurisdiction of the Court of Chester ceased: on motion that the Court should order the bond to be attended with, for the purpose of being put in suit, the Court decreed that the Registrar should order the bond to be assigned for the purpose of being put in suit; *quære* whether, since 20 & 21 Vict. c. 77, an action will lie on such bond (*c*).

Substitution of sureties.

The Court will not discharge the original sureties to an administration bond, and allow other sureties to be substituted for them (*d*).

An administration bond was attested by two witnesses, but not by the person who administered the oath to the administratrix, as required by Rule 38, P. R., Non-C.; the estate being small, and the administratrix resident in New South Wales, the Court dispensed with the rule and made the grant (*e*).

Rule nisi.

And where a person interested under the estate of a deceased intestate, to whom administration has been taken out, makes out a *primâ facie* case of breach of the administration bond, the Court will direct a rule nisi, calling on the sureties to show cause why the bond should not be assigned (*f*).

Assignment of bond.

Court of Probate Act, 1857, s. 83.

The Court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the Registrars of the Court to assign the same to some

(*c*) *Young* v. *Oxley*, 27 L. J. P. & M. 30.

(*d*) *Stark, In goods of*, L. R. 1 P. & D. 76; 35 L. J. P. & M. 42; 13 L. T. 682; 14 W. R. 349.

(*e*) *Parker, In goods of*, L. R. 1 P. & D. 301; 36 L. J. P. & M. 26; 13 L. T. 248; 15 W. R. 262.

(*f*) *Jones, In goods of*, 3 S. & T. 28; 32 L. J. P. & M. 26; 8 L. T. 90; 11 W. R. 191.

person to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond (*g*). It is not now necessary to apply by motion to the Court. The application to assign is made on a summons issued by the applicant against the sureties and returnable before a Registrar to show why an order should not be made for the bond to be assigned.

On a *primâ facie* case of a breach of an administration bond being established, notice in some form having been given to the sureties, the Court will direct the bond to be assigned; but might refuse to do so, if on cause shown the proceeding appeared to be wholly frivolous and vexatious (*h*).

Assigned on condition.

The Court will order an administration bond to be assigned upon being satisfied that the application for the order is made *bonâ fide*, and upon a *primâ facie* case being made out by the applicant, that the condition of the bond has been broken, and that he was entitled to sue the administrator for the breach. Where the alleged breach of the condition of any administration bond was that the administrator had not paid any part of the personal estate of the intestate to one of the next of kin, and the only question in dispute was whether the applicant was one of the next of kin, the Court directed the bond to be assigned to him, upon condition that he would consent to an order that no execution should issue at common law, but that the money, if any, recovered by the judgment should be paid into the Registry: leave to appeal refused (*i*).

(*g*) C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 83.

(*h*) *Baker* v. *Brooks*, *Marshman* v. *Hughes*, 3 S. & T. 32; 32 L. J. P. & M. 25; 8 L. T. 89; 11 W. R. 110.

(*i*) *Young*, *In goods of*, L. R. 1 P. & D. 186; 35 L. J. P. & M. 126; 14 L. T. 634; 14 W. R. 821.

Two bonds.

An administrator swore the estate under twenty pounds and gave the usual bond with A. for surety; subsequently he re-swore the estate under six hundred pounds and gave a fresh bond with two other sureties. He then became bankrupt without having duly administered. The Court ordered the second bond to be assigned, but refused to order the assignment of the first until after the action on the second bond should be decided, it appearing that the estate had been duly administered to the amount for which the surety to the first bond was liable (*k*).

Delivered out to be cancelled.

Where, under a misapprehension as to the value of the personal estate of an intestate, the penalty of an administration bond was too large, the Court, upon the execution of a fresh bond in a penalty proportioned to the actual value of the estate, ordered the original bond to be delivered out of the Registry in order that it might be cancelled (*l*).

(*k*) *Irving, In goods of*, L. R. 1 P. & D. 658; 38 L. J. P. & M. 83; 20 L. T. 684.

(*l*) *Goold, In goods of*, 4 S. & T. 20; 34 L. J. P. & M. 105; 13 L. T. 193; 11 Jur. N. S. 288.

CHAPTER IV.

SECOND OR SUBSEQUENT GRANTS—RESEALING IRISH GRANTS AND SCOTCH CONFIRMATIONS AND COLONIAL GRANTS—ADMINISTRATIONS PENDENTE LITE AND PAYMENTS WITHOUT GRANTS.

Second or subsequent grants. Practice as to applying.

In cases where second or subsequent grants are required, either by reason of the first or previous grant having ceased by death of the grantee or by the fulfilment of the limitations upon which such grant was made, application is made by an oath which fully states the facts which have already occurred. If no fresh estate is disclosed and no further duty is payable, the practitioner by memorialising the Inland Revenue Department obtains on his Inland Revenue affidavit a certificate endorsed and signed by an Inland Revenue officer that the proper duty has been heretofore paid. If fresh estate is included the duty is paid in the ordinary way and is shown by the signed receipt on the Inland Revenue affidavit.

The estate included in the oath and grant (and where application is made for administration *de bonis non* (with will) or, in the case of an intestacy, for administration *de bonis non*) is that which remains unadministered at the date of swearing the Inland Revenue affidavit. A copy of the act or record of the first grant or last previous grant must be bespoken in the Record Keeper's Department and lodged with the papers. The copy acts are required to see that no interim grant has been made between the date of the last application and the present one, as should such a grant have issued it would be noted on the copy record. They are compared with the oath by the Clerk of the Seat and will be given out again to the practitioner with his grant.

Reasons of delay are not required in second or subsequent grants, but where the applicant comes as the legal personal representative of some other person the grant or grants under which he derives his interest must be produced. This is also returned to the practitioner, the Clerk of the Seat noting its production on the oath.

The papers, when complete, are lodged as for a first grant, and the grant, when due, is similarly extracted.

Forms and fees will be found in the Appendix.

Resealing Irish and Scotch Administrations.

The practice already set forth as to resealing Irish probates and Scotch confirmations obtains equally to the resealing of Irish administrations and Scotch confirmations to the executor dative, with the additional certificate which is required in Irish cases, signed by the Registrar of the Irish Court, that sufficient bond has been given in Ireland to cover the amount of the estate in England. The certificate of the Inland Revenue office in Ireland, which is also required, shows that duty has been paid to cover the estate in the United Kingdom, and it discloses the amount of the estate in England. A plain copy of the Irish grant is left with the papers; this is examined by the examiner and is filed with the record of the resealing and the before-mentioned certificates.

To obtain the like extension in Scotland of a grant made in the Probate Division in England, it is necessary that a note appear on such grant that deceased died domiciled in England.

A copy of the engrossment and grant is left with the clerk of the Commissary Court at Edinburgh, who will indorse on such grant a certificate to the following effect:—

"I, A. B., Commissary Clerk, a commissary clerk depute of the county of Edinburgh, hereby certify that this grant

of probate, or these letters of administration, have been produced in the Commissary Court of this county, and that a copy thereof has been deposited with me."

An affidavit as to the property will also have to be filed at the Inland Revenue office in order that the Estate Duty Clerk may send to the Clerk of the Seat a certificate that the proper duty has been paid. In cases of grants of administration with the will annexed or administration, in addition to such copies as above [in cases of probate] a certificate from the Registrar of the Irish Court to the effect that bond has been given in a sum sufficient to cover the property of deceased in England and Ireland must be filed. If there be no effects of deceased in England save trust property, it should be so stated in the certificate of the Registrar in Ireland.

Fees for resealing will be found in the Appendix.

Resealing Colonial Grants.

A list is subjoined of the British possessions to which the provisions of the Colonial Probates Act of 1892 have been applied by Orders in Council.

British Possessions.	Date of Order in Council.
Bahama Islands	23 Nov. 1893
Barbados	29 Jan. 1894
British Columbia	26 Oct. 1896
British Guiana	16 May 1893
British Honduras	30 Jan. 1893
Cape of Good Hope	30 Jan. 1893
Falkland Islands	3 Oct. 1895
Fiji	30 April 1893
Gibraltar	30 Jan. 1893
Gold Coast	16 May 1893
Grenada	3 Feb. 1898
Hong Kong	15 Mar. 1893
Jamaica	18 July 1894

British Possessions.	Date of Order in Council.
Lagos	29 Jan. 1894
Leeward Islands	6 Mar. 1896
Manitoba	27 Nov. 1897
Natal	2 Feb. 1895
Newfoundland	20 May 1903
New South Wales	30 Jan. 1893
New Zealand	30 Jan. 1893
N. W. Territories	18 May 1897
Nova Scotia	26 Oct. 1896
Ontario	15 Mar. 1893
Orange River Colony	23 Oct. 1905
Queensland	19 May 1899
St. Helena	29 Jan. 1900
St. Vincent	19 May 1898
S. Australia	16 May 1893
Straits Settlements	16 May 1893
Tasmania	29 Jan. 1894
Transvaal	16 Feb. 1903
Trinidad and Tobago	27 June 1894
Victoria	30 Jan. 1893
Western Australia	15 Mar. 1893

When the grant or the exemplification of the grant made in the colony has been received, the solicitor proceeds to have a plain copy of it made for filing in the Registry. Unless the executor or administrator applies in person for the resealing, it is necessary that he shall have given a power of attorney to some person in England to so apply. The power of attorney must contain specific authority to apply for "the resealing" of the grant in question. Then, as the case may be, the grantee abroad, or his attorney, swears the oath verifying the grant which has been made abroad, and verifying the advertisement in the newspaper announcing the intention to apply for the resealing of the grant, and stating the amount of the estate in the United

Kingdom. In addition, where the application is to reseal administration with will annexed, or simply letters of administration, the grantee, or his attorney, gives the usual bond with one or more sureties, according to the value of the estate.

In every case, the proper form of Inland Revenue affidavit is to be filled up, and any duty chargeable must be paid at the Estate Duty Office before the papers are lodged.

The advantage of the fixed duties of 1*l.* 10*s.* or 2*l.* 10*s.* under the 33rd and 16th sects. of the Finance Acts of 1881 and 1894 respectively is now extended to applications for resealing colonial grants; the fixed Court fee of 15*s.* is payable in such cases.

The papers when complete are lodged with the receiver in the usual manner, and the remainder of the procedure for extracting the grant is analogous to applications for any other grant.

Additional rules and orders for the Registrars of the Principal Probate Registry in non-contentious business for the carrying out of the provisions of the Colonial Probates Act, 1892.

Rule, dated 7th December, 1892.

92. Application to seal a grant of probate or letters of administration or copy thereof under the Colonial Probates Act, 1892, may be made in the Principal Probate Registry by the executor or administrator or the attorney (lawfully authorized for the purpose) of such executor or administrator either in person or through a solicitor.

93. Such application must be accompanied by an oath of the executor, administrator, or attorney in the form in the Appendix, or as nearly thereto as the circumstances of the case will allow.

94. The Registrars are to be satisfied that notice of

such application has been duly advertised. Form of advertisement in Appendix.

95. On application to seal letters of administration the administrator (or his attorney) shall give bond (for form, see Appendix) to cover the personal estate of the deceased within the jurisdiction of the Court. The same practice as to sureties and amount of penalty in bond is to be observed as on application for letters of administration.

96. Application by a creditor under sect. 2, sub-section 3 of the Colonial Probates Act is to be made by summons before one of the Registrars, supported by an affidavit setting out particulars of the claim.

97. In every case, and especially when the domicile of the deceased at the time of death as sworn to in the affidavit differs from that suggested by the description in the grant, the Registrars may require further evidence as to domicile.

98. If it should appear that the deceased was not at the time of death domiciled within the jurisdiction of the Court from which the grant issued, the seal is not to be affixed unless the grant is such as would have been made by the High Court of Justice in England.

99. The grant (or copy grant) to be sealed and the copy to be deposited in the Registry must include copies of all testamentary papers admitted to probate.

100. When application to seal a probate or letters of administration is made after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the Registrars. Should the certificate be unsatisfactory, the Registrars are to require such proof of the alleged cause of delay as they may think fit.

101. Special, or limited, or temporary grants are not to be sealed without an order of one of the Registrars.

102. Notice of the sealing in England of a grant is to be sent to the Court from which the grant issued.

103. When intimation has been received of the sealing of an English grant, notice of the revocation of, or of any alteration in such grant is to be sent to the Court by whose authority such grant was resealed.

104. The affidavit for Inland Revenue, pursuant to the Customs and Inland Revenue Acts, 1880 and 1881, shall be transmitted to the Commissioners of Inland Revenue, as if the person who applied under the Colonial Probates Act, 1892, were a person applying for probate or letters of administration.

105. The affidavit for Inland Revenue, and accounts and schedules forming part thereof, shall be in such form as may be prescribed by the Commissioners of His Majesty's Treasury.

[NOTE.—The affidavit for Inland Revenue to be used is such a one as would be used for an ordinary grant of probate or administration.]

PENDENTE LITE GRANTS.

In cases where an action is in progress concerning any testamentary disposition of a deceased, or the right to take representation to his estate if he died intestate, it frequently happens that it is found necessary in the interests of the estate to appoint an administrator thereof pending the decision in the said action.

Application is made to the Court for this purpose in the manner and supported by the requisite evidence as set out in the contentious practice of the Court. (See p. 323.) When the order appointing an administrator *pendente lite*

has been obtained, the solicitor obtains an office copy of the order, and takes it with a draft of the oath stating all the facts and accompanied by any other papers bearing on the case to the Clerk of the Seat under the initial of the surname of the deceased. The Clerk of the Seat settles the draft of the oath to lead the grant, and he causes the form of bond for the *pendente lite* administrator to be filled up. When this has been done he hands back the draft oath and the bond to the solicitor, who engrosses the oath, for swearing by the applicant, and who obtains his execution and that of his sureties to the bond. The directions contained in the order as to the penalty of the bond or as to justification of sureties must be observed.

The fees charged by the Clerk of the Seat are 2*s.* 6*d.* for settling the draft oath and 2*s.* per folio each for drawing the bond and for preparing the special grant and the record of same. These fees are not paid to the receiver of papers when the application is lodged, but are paid subsequently in fee stamps to the Clerk of the Seat.

The usual Inland Revenue affidavit is filed and the duty, if any, is paid.

Payments without Grants.

The following payments may be made to persons legally entitled on the death of another, without such persons actually taking out probate or administration :—

Seamen, deceased officers of navy or marines.

Payments of pay, half-pay, pension or allowance of deceased officers of the navy and marines, and of widows' pensions and allowances from the compassionate fund not exceeding 32*l.*; prize-money similarly due and not exceeding 20*l.*; these payments are made under a certificate, which is described in the Act (*a*).

Merchant seamen, effects under 50*l.*

Payments by the Board of Trade of the money, effects, or money received for effects sold (if not exceeding in

(*a*) 2 & 3 Will. 4, c. 40, s. 12 (reciting 11 Geo. 4, c. 20, s. 69).

value 50*l.*), to the widow, children, or party legally entitled, of any deceased seaman or apprentice (*b*). And where a merchant seaman or apprentice dies, leaving a will not executed according to the forms required by that statute, the wages and effects of the deceased are to be dealt with by the Board of Trade as if no will had been made (*c*).

Seamen depositors.

Similarly all sums due to the estate of any deceased, who is entitled to any deposit in any of the savings banks for seamen, established by the 19 & 20 Vict. c. 41, shall be paid and applied by the Board of Trade in the same manner as the money and effects of a deceased seaman (*d*).

Soldiers. Pension, prize-money or pay up to 100*l.*

The Chelsea Hospital Commissioners, or the Secretary at War, may pay to persons (who prove themselves next of kin, legal representative, or otherwise legally entitled) any pension, prize-money, or pay due to any deceased officer, non-commissioned officer, private, or pensioner, provided it does not exceed 50*l.*, although the applicant has not taken out administration or probate (*e*). This is extended now to 100*l.* (*f*). Pension or prize-money is paid by the Commissioners of the Chelsea Hospital, and pay by the Secretary at War.

Soldiers, &c.

With respect to prize-money, the payment is further facilitated by the 2 & 3 Will. IV., which allows the applicant to prove himself, to the satisfaction of the Commissioners of Chelsea Hospital, or their treasurer or deputy-treasurer, to be next of kin, legal representative, or otherwise entitled to any share of the prize-money belonging to a deceased officer, soldier, or other person (*g*).

Foreign soldiers in British service.

Where a claim is made for prize-money by the next of kin of foreigners who have been in the British service as non-commissioned officers or soldiers and have died intestate, the treasurer or deputy-treasurer of Chelsea Hospital (where such next of kin reside abroad) is authorized to

(*b*) 17 & 18 Vict. c. 104, s. 199.
(*c*) *Ib.* s. 200.
(*d*) 19 & 20 Vict. c. 41, s. 5.
(*e*) 11 Geo. 4 & 1 Will. 4, c. 41, s. 5.
(*f*) 31 & 32 Vict. c. 90, s. 2.
(*g*) 2 & 3 Will. 4, c. 53, s. 25.

pay such claim to such next of kin, or some person duly authorized by such next of kin, without requiring the production of letters of administration, or if such foreign non-commissioned officer or soldier die, leaving a will, the treasurer or deputy-treasurer is to pay the person, who by inspection of the original will or an authenticated copy appears to be entitled, without requiring probate (*h*).

Savings bank depositor not exceeding 50*l*.

Where a depositor in a savings bank dies, leaving a deposit in the bank not exceeding 50*l*., exclusive of interest, the trustees or managers of the institution may pay the same to the widow or the persons entitled according to the Statute of Distributions or the rules of the institution, unless within a month from the death of the deceased probate of the will of the deceased is produced, or notice in writing of a will and the intention to prove it or to take out letters of administration is given to the trustees or managers, and in the latter case, unless such will is proved, or such letters of administration taken out, within two months from the death of the depositor. And such payment is valid as between the trustees or manager and any other person, but not as between the party receiving the money and another who can show a better title (*i*). And if the deceased be illegitimate, the trustees and manager may, with the written authority of the barrister appointed to certify the savings bank rules, pay over the deposit to any one or more of the persons who in their opinion would have been entitled if the depositor had been legitimate (*k*).

Illegitimate depositor.

These regulations are extended to deposits of savings at the General Post Office (*l*).

Loan or friendly society.

Similarly, trustees of any certified loan society or friendly society or certified branch, or of any friendly society already established, may pay to the widower or widow or child (if so directed by the rules of the society) of any deceased member whatever may be due, if not exceeding

(*h*) 2 & 3 Will. 4, c. 53, s. 26.
(*i*) 7 & 8 Vict. c. 83, s. 10.
(*k*) *Ib.* s. 11.
(*l*) 24 Vict. c. 14, s. 14.

50*l.*, if the trustees are satisfied that the deceased left no will, or that no letters of administration will be taken out, without probate or letters of administration. If the rules of the society contain no direction as to whom the money should be paid, the trustees are to pay it according to the Statute of Distributions (*m*).

The Treasury —re officers in the civil service.

Similarly, under 31 & 32 Vict. c. 90, the Treasury and such departments may, on the death of persons in the civil service entitled to sums under 100*l.*, direct payment thereof without production of letters of administration (*n*); and the enactments previously in force as to the powers of the War Department are extended to the limit of 100*l.* (*o*), and the payments are made good as against persons claiming and the office, &c. indemnified (*p*).

(*m*) 3 & 4 Vict. c. 110, s. 11; 18 & 19 Vict. c. 63, s. 31.
(*n*) Sect. 1.
(*o*) Sect. 2.
(*p*) Sect. 3.

CHAPTER V.

NOTATIONS.

Notations on grants after they have issued.

NOTATIONS are made upon grants and upon the acts or records in cases where any additions or alterations are required to be made to grants after they have issued from the registry. It is necessary, therefore, to apply to the Notation Department in cases of :—

I. Certificates as to increase of estate and further security on grants of administration.
II. Certificates as to bonds being sufficient in grants of administration to be sealed in Ireland.
III. Orders for notation of domicile on grants to be operative in Scotland.
IV. Orders for alterations in grants.
V. Orders for revocations of grants.
VI. Orders for impounding of grants.
VII. Orders for renunciations after probate.

Affidavit must be made by grantee.

The affidavits, to lead the above certificates and orders, must be made by the administrator or the executor to whom the grant was made. The certificates and all the orders are prepared in the Notation Department.

I. Certificate as to Increase of Estate and further Security.

Where estate is increased.

This certificate is required by the Estate Duty Office (under 55 Geo. III. c. 184, s. 42), and must be obtained from the Notation Department whenever an increase in the estate has necessitated the carrying in a corrective affidavit to the Estate Duty Office.

This certificate, however, is not required on adjusting the duty at the time an administration *de bonis non* is issued where additional estate has fallen in, because sufficient security has been given on the issuing of such grant.

The affidavit, made by the administrator, and the bond by the administrator and his sureties, are taken, together with the grant, to the Notation Department.

When affidavit cannot be made by administrator.

The Affidavit.—When it is impossible or difficult to obtain an affidavit by the administrator, the registrars will accept a certified copy of the estate duty corrective affidavit, if this affidavit has been sworn by the administrator. (This will not obviate the necessity of the administrator being the first party to the additional bond.)

The affidavit cannot be made by one of two administrators, both must join.

[*Stanley* v. *Berners*, 1 Hagg. 222: "Administrators must always act jointly; they cannot, like executors, act independently."

Warwick v. *Greville*, 1 Phill. 126: "Administrators must join and be joined in every act."]

This would apply with still more force to *bonds*, where one administrator would not be accepted.

Date of affidavit.

Limit as to Date of Affidavit.—As a general rule, where an affidavit has been sworn more than six months before filing, the solicitor must give a certificate that the circumstances have not changed. In affidavits as to increase of estate, however, such certificate should be given whenever more than two months has elapsed.

Penalty of bond.

The Bond.—The penalty of the bond must be in double the gross amount of the additional personal estate, and double the additional amount of the gross annual value of the real estate. Where a bond is tendered with a penalty which proves to be less than double the amount of the additional estate, the registrars will receive the same, provided the deficiency in the penalty does not exceed 5*l.* per cent. of such double amount.

Sureties.

Sureties to Bonds.—The rules as to sureties to additional bonds are the same as those governing bonds required on taking out grants of administration.

Extra papers to be filed.

Where the administration was granted to an attorney a further copy of the account of the estate must be filed; where it was granted to a guardian or for the use and benefit of a lunatic (Rule 42), a further declaration of estate must be filed; and whenever a justification of sureties was required in the first instance, the sureties to the additional bond must also justify.

[Forms of affidavit to lead (which can be obtained in the registry), and of certificate, given p. 817.]

Fees.

Fees.—Filing affidavit, 2*s.*; filing bond, 2*s.* 6*d.*; for notation, 5*s.*; for certificate, 1*s.*; and for looking up original bond, 1*s.* When required: filing justification, 2*s.*; filing declaration, 2*s.* 6*d.*

Under the following circumstances, in addition to the above fees for notation further Court fees are payable:

Extra fees.

Where the grant issued, by the authority of the Acts 36 & 37 Vict. c. 52, and 38 & 39 Vict. c. 27, or otherwise, upon payment of the reduced scale of fees; or where the estate was originally sworn under 100*l.*, and is re-sworn over 100*l.*, the full *ad valorem* fee on the re-sworn value of the estate must be paid.

Where the grant was taken out under sect. 33, Customs and Inland Revenue Act, 1881, or under sect. 16, Finance Act, 1894, and the fixed fee of 15*s.* was paid to cover fees of Court and expenses, and the estate is subsequently increased beyond the limit permitted by such latter section (*i.e.* 500*l.*), the full Court fees payable on the re-sworn value of the estate must be paid, no allowance being made for the 15*s.* already paid. Should an estate, however, be increased beyond sect. 33, and, though not exceeding 500*l.*, pay ordinary duty, the full Court fees must be paid.

Should an estate be increased from under 100*l.*, and rectified duty is being paid under sects. 33 or 16, the

difference between the Court fee on the reduced scale originally paid and the fixed fee of 15*s.* must be paid.

II. Certificate as to Bond in Grants of Administration to be sealed in Ireland.

Where grant is to be sealed in Ireland.

This certificate is required by the probate registrar in Ireland (and must accompany the certificate as to duty having been paid, which is necessary in cases of grants to be sealed in Ireland). The certificate states that the bond given here (on the issuing of the grant) is sufficient to cover the estate in Ireland as well as in England. If the Irish estate has been discovered since the issuing of the grant, a further bond must be given to cover such estate.

[Forms of affidavit (which can be obtained in the registry) and certificates given p. 818.]

Fees.

Fees.—Filing affidavit, 2*s.*; for certificate, 2*s.* 6*d.*; and for looking up original bond, 1*s.*

When a notation is required that the English estate has been re-sworn in *Irish grants sealed here*, an affidavit must be filed in the Notation Department with, in administration cases, a certificate from the registrar in Ireland that sufficient security has been given.

Fees.—Filing affidavit, 2*s.*; filing certificate, 2*s.* 6*d.*; for notation, 5*s.*

Bond required for trust estate.

Trust Estate in Ireland.—Where an English administration is to be sealed in Ireland for the purpose of dealing with trust estate in Ireland, a bond must be filed here to cover the amount of such trust estate.

III. Notation of Domicile on Grants to be operative in Scotland.

Where grant is to be sealed in Scotland.

When it has been discovered that a testator or intestate was possessed of personal estate in Scotland in addition to his English estate, it is necessary to have noted upon the grant that the deceased died domiciled in England, in

order that it may have the like force and effect and have the same operation in Scotland as if a confirmation had been granted. (21 & 22 Vict. c. 56, ss. 14, 15, 17.)

The affidavit to lead the order for notation of domicile is taken with the grant to the Notation Department. (This affidavit need no longer be sworn in duplicate, nor by more than one executor.)

[Forms of affidavit (which can be obtained in the registry) and of the order given p. 819.]

Fees.

Fees.—Filing affidavit, 2*s.*; for the order, 2*s.* 6*d.*; for notation on grant, 5*s.*; for notation on record, 2*s.* 6*d.*

Notation required for trust estate.

Notation of domicile must be obtained to deal with trust estate in Scotland.

Where, on account of an increase in the estate, a corrective affidavit has been or is about to be carried into the Estate Duty Office, the certificate as to additional duty having been paid must be obtained on the grant before the notation of domicile will be given.

A grant issued in England cannot be noted that the deceased died domiciled in Scotland.

A grant issued in Ireland and subsequently sealed in England cannot be noted that the deceased died domiciled in England in order to deal with Scotch estate.

A grant issued in England and subsequently sealed in Ireland cannot be noted that the deceased died domiciled in Ireland.

A grant must be issued by the Court where the deceased was domiciled, or it cannot obtain the notation of domicile provided by the Act to deal with Scotch estate.

Notation that "Deceased died domiciled in England" is placed upon English grants in order to deal with estate in—

The Ottoman Empire (Turkey, Egypt, &c.), pursuant to their Order in Council, 1882—18 (a).

And Morocco, pursuant to their Order in Council 28th November, 1889—82 (1).

Applications for notation of domicile on grants which issued in a district registry must be made at the district registry. District registry grants.

IV. Alterations in Grants.

No alteration can be made in a grant which has passed the Seal without a registrar's order. Where grant requires alteration.

An affidavit setting forth the nature of the error in the grant, how such error arose, and the reason necessitating its alteration and the nature of such alteration, must be taken with the grant to the Notation Department.

[No forms of affidavits to lead orders of alteration can be obtained. Form of order given p. 820.]

Fees.—Filing affidavit, 2*s.*; for the order, 2*s.* 6*d.*; for the alteration, 2*s.* 6*d.*; for notation on record, 2*s.* 6*d.* Fees.

In alterations of the Christian name or the date of the death of the deceased, a fresh bond must be filed. The administrator and the sureties may, if convenient, attend at the Notation Department and re-execute the original bond. Fresh bond.

The registrar will not alter the surname, or the first or only Christian name of the deceased (except in such cases as "Ann" to "Anne," "Marianne" to "Mary Anne," where the sound is similar), but will require the grant to be revoked. Alterations in names of deceased.

The name "Sheldrake" was allowed to be altered to "Sheldrick," an alteration not in the actual surname, but in the spelling of it.

If, however, an additional Christian name of an intestate has been omitted by error or oversight of the administrator, it will be inserted.

An alteration in the name of the deceased will be added in the form of an *alias*, where he was formerly or commonly known by some other name. Alias.

But where an *alias* to a testator's name in a probate is asked for, the registrars insist on considerable corrobora-

tive evidence. Besides the baptismal certificate, the registrars require proof in the form of signed receipts or cheques of the deceased, so that the signature may be compared with the testator's. The reason necessitating the insertion of the *alias*, and the nature and amount of the estate (standing in the further name), must be shown in the affidavit.

Address and description.

The registrars will not (except under special circumstances) alter or add to the address and description of the deceased, except, of course, to alter actual errors or to supply omissions.

District registry grants.

Applications for alterations in grants which issued in a district registry must be made at the district registry.

V. Revocations.

Voluntary revocations.

For the revocation of a grant where the grantee voluntarily brings in the grant for the purpose or gives his consent thereto, a registrar's order must be obtained.

An affidavit in support of the application must be taken with the grant to the Notation Department.

The affidavit must be made by the executor or administrator, but where this is impossible, his written consent must accompany the affidavit made by another party. The consent need not be sworn.

[No forms of affidavits to lead orders of revocation can be obtained. Form of order given p. 820.]

Fees.—Filing affidavit, 2*s.*; filing grant, 2*s.* 6*d.*; filing consent, 2*s.* 6*d.*; for registrar's order, 5*s.*; for notation on record, 5*s.*

Grounds for revocation.

A grant will be revoked where :—

1. A will has been discovered after administration, as for an intestacy, has been issued.
2. A will of later date has been discovered after probate of a will of earlier date has issued.
3. A codicil has been discovered after probate of a will has issued, when such codicil revokes the will

or affects the appointment of executors in the will.

4. A codicil has been discovered after administration (with a will) has issued.

5. The grantee dies before the grant passed the Seal.

Where a grantee becomes a lunatic, in some cases the grant is impounded and in other cases it is revoked.

A grant will be revoked where :—

6. One (when there are more than one) of the proving executors becomes a lunatic. (Another grant is issued to the other executor or executors, with power reserved to the lunatic executor when he shall recover.)

7. One of two or more administrators becomes a lunatic. (Another grant is issued to the other administrator or administrators.)

Will or codicil must be produced.

1. When an administration is to be revoked in consequence of a will having been discovered, the will must be brought in to the Notation Department for inspection.

2. Where a will of later date has been discovered, the will of later date must be brought in.

3 and 4. When a codicil has been discovered, the codicil must be brought in.

Certificate of death.

5. Where the grantee has died before the grant passed the Seal, a certificate of death of the grantee must be brought in.

Affidavits by doctor and nurse in lunacy cases.

6 and 7. Where a revocation is sought on account of lunacy, the affidavit of the intended grantee must be accompanied by affidavits from the doctor and nurse as to the lunacy.

There are many other obvious circumstances which necessitate the revocation of a grant, such as the administrator having wilfully or unwittingly represented himself to be what he is not, as in cases of illegitimacy; a relative being found where the grant has been taken by the

Treasury for want of known next of kin, &c., which need not be set out.

Applications for the revocation of grants issued in a district registry must be made at the district registry.

District registry grants.

The revocation of a district registry grant, however, may be carried through in the principal registry if the new grant is to be taken out in the principal registry.

VI. Impoundings.

Where grantee becomes a lunatic.

It is necessary to impound a grant where a sole executor or administrator becomes a lunatic. A registrar's order must be obtained.

An affidavit in support of the application by the intended grantee, accompanied by affidavits from the doctor and nurse as to the lunacy, must be taken with the grant to the Notation Department.

[Forms of affidavits and order given pp. 821 and 822.]

Fees.—Filing affidavit, 2*s.*; for registrar's order, 2*s.* 6*d.*; for impounding grant, 2*s.* 6*d.*; for notation on record, 2*s.* 6*d.*; filing order in lunacy, 2*s.* 6*d.*

Another grant issued.

When the grant is impounded, another grant is issued to some other party for the use of the lunatic until he shall become of sound mind. If a committee has been appointed of the lunatic's estate, the grant will go to such committee. If anyone has been appointed under sect. 116, Lunacy Act, 1890, the grant will go to such person. Failing either of these appointments, the grant will go to some other next of kin of the deceased.

In all cases grant to be brought in.

It is to be understood that, in all the above cases, the original grant is to be brought in to be impounded, and is retained in the registry.

Grant given out on recovery of lunatic.

If the lunatic should at any subsequent time become of sound mind, the impounded grant will, upon his application, with the consent of the grantee of the interim grant, and upon sufficient medical support, be given out to him.

An order of the registrar for this purpose must be obtained at the Notation Department.

Applications for the impounding of a district registry grant should be made at the district registry. District registry grants.

The impounding, however, may be carried through in the principal registry if the new grant is to be taken out in the principal registry, or if other circumstances render it more convenient.

VII. Renunciations.

For the purpose of filing the renunciation of an executor, to whom power to prove has been reserved in the probate, a registrar's order must be obtained. Renunciation after probate.

The renunciation must be taken with the probate to the Notation Department.

[Form of registrar's order given, p. 822.]

Fees.—Filing renunciation, 2*s.* 6*d.*; for registrar's order, 2*s.* 6*d.*; for notation on record, 2*s.* 6*d.*

A renunciation is not noted upon the grant but only upon the act or record. Not noted on grant.

A copy of the act should be obtained when it is necessary to prove the renunciation.

The Bank of England, however, requires a copy of the renunciation itself.

An affidavit as to the identity of an executor must be filed when required, *e.g.*, when the renouncing executor was appointed in the will under an incorrect or incomplete name. Affidavit as to identity.

When the grant cannot be produced an office copy of the act must be lodged in lieu of it. This copy act will be noted.

If a renunciation bears a seal, it is a deed, and must bear a 10*s.* stamp. A renunciation without seal, however, may be substituted for it.

By attorney.

A renunciation may be made by an attorney, but the power must expressly set forth that he may renounce.

If an executor will not renounce voluntarily he may be cited, and if he does not appear to such citation he will be treated as if he had renounced (Court of Probate Act, 1858, s. 16).

District registry grants.

Applications for filing renunciations of executors after probate which issued in a district registry must be made at the district registry.

CHAPTER VI.

OF PRACTICE AND PLEADING IN THE PROBATE DIVISION IN CONTENTIOUS BUSINESS.

Caveats.

Caveats: Practice as to, not altered.

As we have seen, the Judicature Acts have had "no effect whatever upon the non-contentious branch of the jurisdiction of the Probate Division" (*a*), and the practice of the registry respecting caveats has in no way been affected by the passing of those Acts.

The subject of caveats seems to find its proper place in the contentious business of the Probate Division, although by a head-note to the rules of the Probate Court for non-contentious business, "Non-contentious business shall include all common form business as defined by the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), and the warning of caveats."

Probate Rules, N.-C. P. R.

And it was decided in the case of *Moran* v. *Place* (1896, P. 214; 65 L. J. P. 83; 47 L. T. 661) that a caveat entered in a probate suit does not constitute the commencement of an action. But for the sake of convenience, "caveats" have been included in the Contentious Practice.

The rules regulating the practice with regard to caveats are to be found partly among the rules for "non-contentious business," and partly among the rules for "contentious business."

By whom entered.

Where a grant of probate or letters of administration has not yet issued, any person intending to oppose such issuing, does so by entering a caveat.

(*a*) *Per* Hannen, P. (1881), *In the goods of Tomlinson*, 6 P. at p. 210.

For what purpose entered.

A caveat, however, need not be entered merely for the purpose of disputing a will. But the caveator will be required to withdraw his caveat before a grant will issue to him. It may be entered for the purpose of protecting it (*b*), as the caveator, being entitled to notice or "warning" before a grant can issue, has thus the opportunity of entering an appearance, and may thereupon *oppose* or *support* the grant as his interest may dictate.

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 53.

By the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 53, "Caveats against the grants of probates or administrations may be lodged in the principal registry, or in any district registry, and (subject to any rules or orders under this Act) the practice and procedure under such caveats in the Court of Probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the Prerogative Court of Canterbury; and immediately upon a caveat being lodged in any district registry, the district registrar shall send a copy thereof to the registrars to be entered among the caveats in the principal registry; and immediately upon a caveat being entered in the principal registry, notice thereof shall be given to the district registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other district registrar to whom it may appear to the registrar of the principal registry expedient to transmit the same."

Probate Rules. N.-C. B. 59—67; D. R. 72—78; 7—12 C. B.

The Rules applying to caveats are from 59 to 67, Probate Rules, Non-contentious Business; 72 to 78, District Registries; and 7 to 12 of the Contentious Business.

For form of caveat, see Form 32, Probate Rules, Non-contentious Business.

Probate Rules. R. 59, N.-C.B. and R. 7, C.B.

By Rule 59, Probate Rules, Non-contentious Business, and Rule 7, Contentious Business, "Persons intending to oppose the issuing of a grant of probate or administration must personally or by their solicitor enter a caveat in the principal registry or in a district registry: if in the prin-

(*b*) *Ingram* v. *Strong*, 2 Phill. 315.

cipal registry, the person entering the caveat must also insert the name of the deceased in the index to the caveat book."

Caveat books.

Books called the "caveat books" are kept by the clerks of the seats in the principal registry, and by a similar official in the district registries. They contain printed forms of caveats. [*Fill up the form in the caveat book containing the initial letter of the name of the deceased with the name of the deceased, his last place of abode, the day of his death, and your name and address, together with the date on which you are actually entering it, and sign it, giving again your address.*] If it is in the principal registry, after having filled up the form, write the name of the deceased in the index to the caveat book, give the number of the caveat, and pay a fee stamp of 1*s.* If the deceased died in *a Probate district* and the caveat is entered in the principal registry, an additional fee stamp of 1*s.* 6*d.* is handed to the officer taking the caveat, who will then send notice of it to the country.

Practical directions for entering.

Receipt for caveat.

On entering the caveat the officer gives a receipt, which should be carefully preserved, as if it is afterwards wished to *subduct*, *i.e.*, withdraw the caveat, this receipt must be produced.

Probate Rules. R. 60, P. R. N.-C. and R. 8, C. B.

By Rule 60, Probate Rules, Non-contentious Business, and Rule 8, Contentious Business, "A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time."

R. 61, P. R. N.-C.

Rule 61, Probate Rules, Non-contentious Business, provides that the registrars shall send notice immediately on a caveat being entered to any district registrar within whose district it is shown that the deceased died.

R. 62, P. R. N.-C.

By Rule 62, Probate Rules, Non-contentious Business, "No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in a district registry."

R. 63, P. R. N.-C. and R. 9, C. B.

By Rule 63, Probate Rules, Non-contentious Business, and Rule 9, Contentious Business, all caveats are to be warned in the principal registry, and the warning is to be left at the place mentioned in the caveat as the address of the person who entered it.

Directions for warning.

Before issuing a grant of probate or administration, the caveat book, which is kept by the clerks of the seat, is searched, and upon the entry of a caveat being discovered, the grant to the applicant is stopped. The party who is prevented from taking his grant in consequence of the entering of the caveat takes out what is called a "*warning*." The form of warning (*c*) is furnished by the clerk to the applicant, who fills it up according to his case and hands it back to the clerk. It is then sent by the clerk to the registrar, by whom it is signed. The fee for a warning in the principal probate registry district is 2*s*. 6*d*., with an extra 1*s*. 6*d*. where notice has to be sent to a district registry. All fees paid by stamps.

Warning of—what is.

This "warning" is a notice given by the registrar of the principal registry to the caveator, according to the caveat "*warning*" him within six days after the service of the warning (inclusive of the day of the service but exclusive of Sundays) to enter an appearance, or to cause an appearance to be entered for him, in the principal registry, to the caveat which he had previously entered, and to set forth his interest, concluding with a notice that in default of his doing so, the Court will proceed to do all such acts, matters and things as shall be necessary.

Form of warning.

At the foot is a statement showing at whose instance the warning is issued from the registry, and what his interest in the estate is, and if under a will or codicil, giving the date thereof, and also giving an address within three miles of the General Post Office, where notices, &c. may be served.

A copy of this document must be served on the party

(*c*) For forms of WARNING, see *post*, Appendix.

entering the caveat, either *personally* or by post, at the option of the party "*warning*."

By Rule 64, Probate Rules, Non-contentious Business, and Rule 10, Contentious Business, "it shall suffice for the warning of a caveat for the registrar to send by post a warning signed by himself to the person who entered the caveat." Probate Rules. R. 64, N.-C. B. R. 10, C. B.

If service is to be effected by post, it is done through the registrar, and an extra fee of 2*s.* 6*d.* is payable in fee stamps, and 2*d.* for registration fee.

If no appearance is entered within seven days the grant is allowed to issue, in spite of the caveat, on proper affidavits of the service of the warning and of non-appearance being filed. The affidavit of search must be brought up to the day before the grant issues.

By Rule 65, Probate Rules, Non-contentious Business, and Rule 11, Contentious Business, "the warning is to state the name and interest of the party on whose behalf it is issued, and the date of the will or codicil under which he claims (if his claim be by virtue of a testamentary paper), and is to contain an address within three miles of the General Post Office, at which any notice requiring service may be left. The form of warning will be supplied in the registry." R. 65, N.-C. B. R. 11, C. B.

Although the six days have elapsed, an appearance may be entered at any time after, provided the grant has not been actually sealed. Appearance to warning.

By Rule 26, Probate Rules, Contentious Business, the appearance must be entered in the principal registry. Where entered.

Where a caveat had been entered by the person interested under a marriage settlement, "in case the deceased had not duly executed a will," but such caveat was not warned by the party propounding the will: the Court directed that the caveat should be warned, in order that the party who had entered it might, if he thought proper, intervene in the suit (*d*).

(*d*) *Ming* v. *Ming* (1867), 36 L. J. P. 51; 16 L. T. 69.

R. 66, N.-C. B. By Rule 66, Probate Rules, Non-contentious Business, "before any citation is signed by the registrar, a caveat shall be entered against any grant being made in respect of the estate to which such citation relates, and notice thereof must be sent to any district where the deceased appears to have resided at the time of his death."

R. 12, C. B. By Rule 12, Contentious Business, "upon an appearance being entered in answer to the warning of a caveat, the matter shall be entered as a cause in the Court book, and the contentious business shall thereupon be held to commence, and the expenses of the entry of such caveat and the warning thereof shall, upon taxation, be considered as costs in the cause."

R. 67, N.-C. B. By Rule 67, Probate Rules, Non-contentious Business, "in order to clear off a caveat when no appearance has been entered to a warning duly served, an affidavit of the service of the warning, stating the manner of service, and an affidavit of search for appearance, and of non-appearance, must be filed."

R. 87, N.-C. B. By Rule 87, Probate Rules, Non-contentious Business, "the time fixed by a warning for entering an appearance shall in all cases be exclusive of Sundays, Christmas Day, and Good Friday."

Rr. 74, 77, D. R. By Rule 74, District Registry, "if a caveat is entered in a district registry, the district registrar is at once to send a copy thereof to the principal registry"; and by Rule 77, after entry of a caveat in a district registry, the district registrar is not to proceed with the grant to which it relates "until it has expired or been subducted, or until he has received notice from the principal registry that the caveat has been warned and no appearance given, or that the contentious proceedings consequent on the caveat have terminated."

Effect of. The effect of the entry of the caveat is to stop all proceedings for the purpose of obtaining a grant of probate or administration, in respect of the goods of the deceased named in the caveat; this continues until the caveat expires

or has been subducted, either voluntarily or after having been warned. Papers are received in the registry, but *not given out*, during the existence of a caveat.

Caveat books are kept at the seats. The following is the form of caveat:—

[*The name of the deceased and the number of this caveat must be entered in the index at the end of the book.*]

[*Here write the name of the registry within the district of which the deceased resided at the time of his death.*]

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

(Probate.)

The Principal Registry.

Let nothing be done in the personal estate and effects of Robert Jackson, late of 145, Strand, in the county of Middlesex, stationer, deceased, who died on the 2nd day of December, 1891, at 145, Strand, aforesaid, unknown to James Lynn, of Furnival's Inn, solicitor for parties having interest.

Dated this 16th December, 1891.

(Signed) John Glover.

Receipt.

No. 18 .

A caveat in the estate and effects of ; deceased, who died on , the day of , 18 , was this day entered by , of , solicitor.

A. B.

Should it be desired to subduct the caveat, the party entering it or his clerk, on producing the receipt, writes in the margin of the caveat, "I subduct this caveat," and signs his name.

If deceased had a residence within the limits of a district registry, notice of the caveat is sent to such registry. As stated above, the following fees are charged in such cases:—

Fee for entering caveat at principal registry, 1*s.*
,, notice of entry to district registry, 1*s.* 6*d.*

Same fees are charged for subducting.

Appearance to Warning to a Caveat.

It is directed—

A. That, without the permission of one of the registrars, no appearance shall be entered for any person claiming an interest otherwise than as—

1. Executor.
2. Legatee or devisee (residuary or otherwise) in trust or beneficial.
3. Husband or wife, next of kin, or heir-at-law.
4. A person entitled in distribution to the personal estate or a person interested in the real estate of the deceased in case of an intestacy.
5. Creditor.
6. The legal representative of any of the above mentioned persons.

B. That an appearance entered on behalf of an executor, legatee or devisee, or the representative of a legatee or devisee, shall state the date of the will or codicil under which he or she claims an interest.

C. That an appearance entered for a next of kin or person entitled in distribution, or the representative of a next of kin or person so entitled, shall set forth the relationship of such next of kin or person entitled to the testator or intestate.

The party appearing must enter appearance in the current index provided for that purpose in the Contentious Department.

A copy of this appearance should be sent to the plaintiff's solicitor.

Solicitor for the party cited or warned.

Practice in caveats.

If the caveator appears to the warning, no grant can issue without an order of the Court or registrar.

The party warning can, after appearance has been entered, issue a writ of summons and the action proceeds in the ordinary manner.

But if the caveator, after appearance to the warning, does not desire to proceed further in the matter, he must give a notice to the other side to that effect. The party warning can then take out a summons for discontinuance

of proceedings and for the grant to issue to him. The consent of the caveator should be endorsed on the summons in order to obtain the grant.

If no appearance is entered to the warning, the party applying for the grant files an affidavit of service of the warning and of non-appearance, and the grant issues in the usual way.

An executor who has entered a caveat and has been warned cannot enter an appearance against another executor in respect of the same will, as both have an equal right to the grant.

In the case of an intestacy where a party appears to warning who has an equal title to the grant as the party warning, a summons must be taken out to determine to whom the grant is to issue.

CHAPTER VII.

SUMMONSES.

Summonses.

PREVIOUS to the passing of the Judicature Acts the practice as to summonses in the Probate Court was regulated entirely by the Probate Rules, 1862, 98 to 106, for contentious business. (See also Rules 133 to 136.)

At the same time, though laid down for "contentious," they applied equally to "non-contentious" business.

Non-contentious business not affected by Judicature Acts.

By sect. 18 of the Judicature Act, 1875, it is provided that the Rules of the Court of Probate shall remain in force except where expressly varied by the Rules of the Supreme Court. It has also been held by Hannen, P., that the Judicature Acts have no effect whatever upon the non-contentious branch of the Probate Division (*a*).

These rules, therefore, apply to all summonses in non-contentious matters, and they also apply to all summonses in contentious business so far as they are not overridden by the Rules and Orders of the Supreme Court.

The Divorce Registry and the department of the clerk of the papers are now amalgamated into the Contentious Department, so in interpreting these rules the Contentious Department must be read instead of the clerk of the papers.

Probate Rules.
R. 98, C. B.

By Rule 98, Contentious Business, "A summons may be taken out by any person in any matter, whether contentious or non-contentious, in which there is no rule or practice requiring a different mode of proceeding."

R. 99, C. B.

Rules 99 and 100 are not expressly repealed. But the present practice is for the party issuing the summons to bring into the Contentious Department two copies of the

(*a*) *In the goods of Tomlinson* (1881), 6 P. D. 209; 50 L. J. P. 74.

summons, with the time and the day returnable properly filled in. One copy, with the stamps affixed on the left hand margin, is retained in the registry. The other, stamped with the signature of the president, is returned to the practitioner. A copy of the summons must be served on the party summoned before 7 p.m., or on Saturdays before 2 p.m., one clear day at least before the summons is returnable. (Rule 100.) Practice on summonses.

The rule in the High Court under Ord. LXIV. r. 11 that summonses must be served before 6 p.m., except on Saturdays, probably now obtains in the Probate Division.

Summonses are heard by the registrars at the Probate Registry, Somerset House, during the sittings on Tuesdays and Fridays, at 11.30. There are two lists of summonses: those with counsel are taken at 11.30 a.m. and those without counsel at 12 o'clock.

Summonses are heard by the judge during the sittings on Saturdays, at 10.30 (unless otherwise ordered), in chambers, at the Royal Courts of Justice.

During the vacations summonses are taken by the registrars every day at 11.30. No list for counsel is made during the vacations. In the long vacation a special notice as regards summonses and motions is issued, and is obtainable at the registry.

By Rule 101, Contentious Business, "On the day and at the hour named in the summons, the party issuing the same is to present himself with the original at the judge's chambers." R. 101, C. B.

By Rule 102, Contentious Business, "Both parties will be heard by the judge, who will make such order as he may think fit, and a note of such order will be made by the registrar in the summons book." R. 102, C. B.

By Rule 103, Contentious Business, "If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the judge, who will thereupon make such order as he may think fit." R. 103, C. B.

R. 104, C. B. By Rule 104, Contentious Business, "An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient and bar the party taking out the summons from the right to go before the judge on that occasion."

R. 105, C. B. By Rule 105, Contentious Business, "If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons or the copy served on the opposite party must be filed in the registry. An order will thereupon be drawn up and delivered to the person filing such summons or copy."

The present practice is for the order to be drawn up on the hearing of the summons. The original order is handed out to the party issuing the summons or obtaining the order. A copy is put in the minutes. The fee for the order is paid when the summons is issued, and is returned if no order is made. Copies of the order must be served on the parties affected. If the party summoned does not appear on the hearing of the summons, the order asked for is usually made subject to an affidavit of service.

R. 106, C. B. By Rule 106, Contentious Business, "If a summons is brought to the clerk of the papers, with a consent to an order indorsed thereon, signed by the party summoned or by his . . . solicitor . . . an order will be drawn up without the necessity of going before the judge: Provided that the order sought is, in the opinion of the registrars, one which, under the circumstances, would be made by the judge."

Ord. LIV. r. 1. By Ord. LIV., R. S. C., r. 1, "Every application at chambers not made *ex parte* shall be made by summons."

Ex parte applications are usually (1) leave to serve writ out of the jurisdiction; (2) leave to renew writs.

R. 12. Jurisdiction of masters to be same as of a judge at chambers. By Rule 12, in the King's Bench Division a master, and in the Probate, Divorce and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as

under the Acts or these rules may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters; that is to say,—

Exceptions.

(a) All matters relating to criminal proceedings or to the liberty of the subject:

(b) Granting leave for service out of the jurisdiction of a writ, or notice of a writ, of summons:

Adding Parties out of the Jurisdiction.—A registrar has power to do this, though he cannot give the necessary leave to issue a concurrent writ, and serve it, or notice of it, on the added parties. (*Burt* v. *Bowen*, 8 Times Rept. 28.)

(c) The removal of actions from one Division or judge to another Division or judge:

(d) The settlement of issues, except by consent:

(f) Appeals from district registrars:

(g) Prohibitions:

(h) Injunctions and other orders under sub-sect. 8 of sect. 25 of the principal Act:

(i) Awarding of costs, other than the costs of or relating to any proceeding before a master, or registrar, and other than costs which by these rules, or by the order of the Court or a judge, he is authorised to award:

(k) Reviewing taxation of costs:

(l) Orders absolute for charging stocks, funds, annuities, or share of dividends, or annual proceeds thereof:

A registrar cannot discharge an order *nisi*, though he can make such an order. (*Mitchell* v. *De Vesey*, 67 L. T. 53.)

(m) Acknowledgments of married women.

Matters coming before the registrars on summons.

Summonses for further time to plead, to amend pleadings, for further particulars, to strike out irrelevant or prolix pleadings, for further and better answers to interrogatories, for taking evidence by special examination, to appoint a guardian *ad litem* to an infant plaintiff or defen-

dant, for leave to intervene in a suit, assignment of a bond in order to sue on it, for an inventory, and summons for discontinuance of contentious proceedings, are among the most usual that come before the registrars.

For the practice under a summons for directions, see *post*, p. 403.

Ord. LIV. r. 21. Appeal from master.

By Ord. LIV. r. 21, "Any person affected by any order or decision of a master may appeal therefrom to a judge at chambers. Such appeal shall be by way of indorsement on the summons by the master at the request of any party, or by notice in writing to attend before the judge without a fresh summons, within five days after the decision complained of, or such further time as may be allowed by a judge or master. Unless otherwise ordered, there shall be at least one clear day between service of the notice of appeal and the day of hearing."

The usual practice is for the party appealing to fill in a fresh form of summons, for which no fee is charged. By Ord. LIV. r. 20, the registrar may refer any summons to the judge. In these cases no fresh summons is issued. The summons is merely put in the judge's book for the next day of hearing.

Time for appeal in Probate Division.

The time for appealing from an order made by a registrar of the Probate Division is the same as that limited by the above Rule 21, for appealing from an order of a master: viz., five days from the decision, though a registrar is not named in that rule (*b*).

R. 22.

Rule 22. "An appeal from a master's decision shall be no stay of proceeding, unless so ordered by a judge or master."

Appeals from chambers to Court of Appeal.

Appeals to the Court of Appeal from orders made in chambers are subject to the same rules in the Probate Division as in the Chancery Division (*c*). An appeal from

(*b*) *In the goods of Patrick* (1889), 14 P. D. 42; 58 L. J. P. 36; 60 L. T. 343.

(*c*) *Rigg* v. *Hughes* (1884), 9 P. D. 68; 53 L. J. P. 62; 50 L. T. 293.

a judge in chambers is governed by the Judicature Acts, 1873, 1875 and 1894, and S. C. R., Ord. LVIII. The practice is for the judge in chambers on the hearing to make or refuse an order and certify that he does not require further argument, or adjourn the matter into Court for further argument. This is a re-hearing, and not an appeal. The judge then makes an order or refuses it. Application to appeal should be made at the hearing. The judge then grants leave or refuses it.

Ord. LVIII. r. 3. Notice of appeal from any interlocutory order shall be a four days' notice.

Appeal from refusal of *ex parte* application.

Rule 10. "Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Court of Appeal may allow."

"**Or within such enlarged time.**"—An application to enlarge the time for appeal must in the first instance be made to the judge of the Court below, Rule 17.

Time for appealing from interlocutory and final order.

Rule 15. "No appeal to the Court of Appeal from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of *fourteen* days, and no other appeal shall, except by such leave, be brought after the expiration of *three months*. The said respective periods shall be calculated, in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may

Security for costs.

be directed under special circumstances by the Court of Appeal."

By the Judicature Act, 1894, s. 1, no appeal shall lie—

(a) From an order allowing an extension of time for appealing from a judgment or order; nor

(b) Without leave of the judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge, except in the following cases. (For exceptions, see Act.)

Applications for leave to appeal.

Sect. 6. An application for leave to appeal may be made *ex parte* or otherwise, as may be prescribed by the rules of the Court.

These applications, when leave to appeal alone is asked for, are always made *ex parte;* but if for an extension of time, notice should be served on the other side. The Court of Appeal has power to grant leave to appeal, although the judge in the Court below has refused it. Leave to extend the time must be made to the Court of Appeal, and not to the Court below. Extension of time is only granted under special circumstances.

Summons for discontinuance.

A summons to discontinue proceedings is heard before a registrar and applies generally in the following cases, where an appearance has been entered to a caveat or a writ issued :—

(1) Where the defendant gives notice of not continuing the action either before or after a writ has issued.

(2) Where a writ has been issued and no appearance has been entered, and it is not desired to prove the will in solemn form.

(3) In default of pleading, unless the plaintiff wishes to prove the will in solemn form.

(4) In case of letters of administration where there is a dispute as to the person entitled to administration.

(5) By consent.

Form of Summons.

In the High Court of Justice.

Probate, Divorce and Admiralty Division.
(Probate.)

In the estate of , deceased.

against

Let the attend one of the registrars at the principal probate registry of the High Court of Justice, at Somerset House, Strand, in the county of Middlesex, on next, the day of , 19 , at of the clock, to show cause why the contentious proceedings in this , arising from caveat No. , entered on the day of , 19 , and also from writ of summons issued on the day of , 19 , should not be discontinued, and why , of , late of , the deceased herein, should not be granted to , the in this , if entitled thereto.

Dated day of , 19 .

Summons issued by , solicitor for the .

Originating Summonses (Ord. LIV. r. 4d).

Form and issue of originating summons.

Rule 4b. "An originating summons shall be in the Form No. 1a or b, Appendix K, or in the Forms G or H, Appendix K, to these Rules, with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, or in probate matters in the probate registry, or in admiralty matters in the admiralty registry, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave at the Central Office, probate registry, or admiralty registry, as the case may be, a copy thereof, which shall be filed and stamped in the manner required by law. In probate and admiralty matters the signature of the President shall be deemed to be equivalent to sealing."

Appearance to originating summons.

Rule 4c. "The parties served with an originating summons shall, except as hereinafter provided, before they

are heard, enter appearances at the Central Office, probate matters at the probate registry, or in admiralty matters at the admiralty registry, and give notice thereof. A party so served may appear at any time before the hearing of the summons. If he appears at any time after the time limited by the summons for appearance he shall not, unless the Court or a judge shall otherwise order, be entitled to any further time for any purpose, than if he had appeared according to the summons."

R. S. C., August, 1894, r. 4.
Default of Appearance.—See Ord. 13, r. 15.

Attendance under originating summons.

Rule 4D. "The day and hour for attendance under an originating summons to which an appearance is required to be entered shall, after appearance be fixed by notice, sealed with the seal of the Central Office in the case of a summons issued in the Queen's Bench Division, or of the chambers of the judge to whom such summons is assigned in the case of a summons issued in the Chancery Division, or of the probate registry in the case of probate matters, or of the admiralty registry in the case of admiralty matters. Such notice shall be in Form No. 1F, Appendix K. The notice shall be served on the defendant or respondent by delivering a copy thereof at the address for service named in the memorandum of appearance of such defendant or respondent not less than four clear days before the return day. The day and hour for the hearing of an *ex parte* summons shall in the Chancery Division be fixed at the chambers of the judge to whom the matter is assigned on production of the originating summons."

Rule 4F. "A respondent to an originating summons:

"(10.) In probate matters (where there is no pending cause or matter) relating to—

(a) Acceptance of foreign sureties,

(b) Applications for grant notwithstanding caveat,

(c) Leave to withdraw caveat after warning;

shall not be required to enter an appearance."

DECLARATION ON ORIGINATING SUMMONS (Ord. LIVA.).

Rule 1. "In any division of the High Court, any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested." Power to make declarations on summons.

Rule 2. "The Court or a judge may direct such persons to be served with the summons as they or he may think fit." Service.

Rule 3. "The application shall be supported by such evidence as the Court or a judge may require." Evidence.

Rule 4. "The Court or judge shall not be bound to determine any such question of construction if in their or his opinion it ought not to be determined on originating summons." Discretion of Court.

By Ord. LXXI. r. 1A, an "Originating Summons" means every summons other than a summons in a pending cause or matter.

By Rule 64, Contentious Business, "any question arising in a cause, and not being one of interest, domicil, or other matter usually brought before the Court by declaration and plea, may be brought before the Court by petition." These questions may arise when no suit is pending, or as collateral or incidental to a cause, as for example:— R. 64, C. B.

If there is a contest for a grant of administration, and the interest is admitted, but the parties being in an equal degree of relationship, the one seeks to deprive the other on the ground of want of business habits, improper conduct, or the like, of the grant, that question was formerly decided on act on petition, and is now decided by the registrar on summons. So also may be questions as to personal qualifications, jurisdiction (in some instances), the justification of sureties, guardianships, and the like. Matters formerly brought by act on petition now brought by summons.

It is often doubtful whether a matter ought to be brought before the Court in the first instance by summons Matter proper for summons must not be

brought on motion.

or motion. In such case the practitioner must be extremely careful, as if a matter is brought before the Court on motion which ought to have been heard in chambers, the party offending may be condemned in costs.

Fees on Summonses.

	s.	*d.*
Summons for Directions	15	0
Summons to discontinue Proceedings	13	0
after a summons for Directions	10	0
Notice for further Directions	5	0
Notice for Time	3	0
Summons to the Judge	8	0
(On Appeal, no fee.)		
Summons on other matters	8	0

All stamps should be affixed on the left-hand margin of the summons.

CHAPTER VIII.

MOTIONS IN GENERAL—ATTACHMENT—RECEIVER OR ADMINISTRATOR PENDENTE LITE—INJUNCTIONS AND MANDAMUS—PRESUMPTION OF DEATH—REGULATIONS AS TO.

Motions.

Motions to the Court are constantly necessary, both in non-contentious and contentious business. Probate Rules. Motions.

As with summonses, formerly the practice as to motions was governed entirely by the Court of Probate Rules of 1862. Since the passing of the Judicature Acts it has been governed partly by those rules and partly by Ord. LII. (R. S. C.), rr. 1—15.

By Rule 110 (Contentious Business), "It shall be sufficient to leave all notices and copies of pleadings and other instruments which by the rules and orders of the Court are required to be given or delivered to the opposite parties in a cause, or to . . . their solicitors . . . and personal service of which is not expressly required, at the address furnished by such parties respectively." R. 110, C. B.

By Rule 111 (Contentious Business), "When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the other parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the registry with the case for motion, but no proof of the service of the notice will be R. 111, C. B.

required, unless by direction of the judge, or of the registrars in his absence."

The length of notice required for probate motions is governed by S. C. R., Ord. LII. r. 5, and not by this rule. (*Donovan* v. *Donovan*, 91 L. T. Jour. 56. See *post*, p. 346.)

R. 112, C. B. By Rule 112 (Contentious Business), "If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded on the application of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the judge shall otherwise direct."

R. 113, C. B. By Rule 113 (Contentious Business), "When it is necessary to serve personally any order or decree of the Court, the original order or decree, or an office copy thereof (*a*), under seal of the Court, must be produced to the party served, and annexed to the affidavit of service marked as an exhibit by the commissioner or other person before whom the affidavit is sworn."

R. 124, C. B. By Rule 124 (Contentious Business), "Cases for motion are to set forth the style and object of, and the names and descriptions of the parties to the cause or proceeding before the Court; the proceedings already had in the cause, and the dates of the same; the prayer of the party on whose behalf the motion is made, and briefly, the circumstances on which it is founded."

R. 125, C. B. By Rule 125 (Contentious Business), "If the cases tendered are deficient in any of the above particulars, the same shall not be received in the registry without permission of one of the registrars."

R. 126, C. B. By Rule 126 (Contentious Business), "On depositing the case in the registry, and giving notice of the motion, the affidavits in support of the motion, and all original documents referred to in such affidavits, or to be referred to by

(*a*) Or an order drawn up in the first person with a judge's stamp.

counsel on the hearing of the motion, must be also left in the registry; or in case such affidavits or documents have been already filed or deposited in the registry, the same must be searched for, looked up, and deposited with the proper clerk in order to their being sent with the case to the judge."

R. 127, C. B.

By Rule 127 (Contentious Business), "Copies of any affidavits or documents to be read or used in support of a motion are to be delivered to the other parties to the suit who are entitled to be heard in opposition thereto."

Ord. LII. r. 1. Application by motion.

By Ord. LII. r. 1, "Where by these rules any application is authorised to be made to the Court or a judge, such application, if made to a divisional Court or to a judge in Court, shall be made by motion."

R. 2. Restriction on rules *nisi* and orders to show cause.

By Rule 2, "No motion or application for a rule *nisi* or order to show cause shall hereafter be made in any action, ... or (b) for attachment, or (c) to answer the matters in an affidavit, or . . . . or (e) against a sheriff to pay money levied under an execution."

R. 3. Where notice of motion to be given.

By Rule 3, "Except where according to the practice existing at the time of the passing of the principal Act any order or rule might be made absolute *ex parte* in the first instance, and except where notwithstanding Rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may move to set it aside."

Ex parte application.

R. 4. When grounds of notice of

By Rule 4, "Every notice of motion . . . . for attachment, ... shall state in general terms the grounds of the application; and, where any such motion is founded

motion to be stated.

on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion."

R. 5. Length of.

By Rule 5, "Unless the Court or a judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion: provided that in applications to answer the matters in an affidavit . . . . the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion."

Short notice.—Leave to serve short notice of motion may be obtained on *ex parte* application to the Court, but will only be given when the circumstances of the case require it, and it must be distinctly stated to the Court that the application is for short notice, and the fact that short notice has been allowed must be stated in the notice of motion. Leave to serve short notice of motion cannot be given by a registrar or master even in the vacations. (Conacher, V.-C., 29 W. R. 230; Annual Practice, 1906, p. 697.)

R. 6. Motions may be dismissed or adjourned where necessary notice not given.

By Rule 6, "If on the hearing of a motion or other application the Court or a judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or judge may think fit to impose."

R. 7. Adjournment of hearing.

By Rule 7, "The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or judge shall think fit."

R. 8. Service of notice on defendant served with writ but not appearing.

By Rule 8, "The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose."

By Rule 9, "The plaintiff may, by leave of the Court or a judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons, and before the time limited for the appearance of such defendant." R. 9. Service of notice of motion with writ.

Notice of motion served under this rule should state the fact that special leave has been given, but the order giving leave need not be served.

By Rule 11, "No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff." R. 11. Notice to sheriff to return writ, &c.

By Rule 13, "Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the Court or a judge shall otherwise direct, and shall take effect accordingly." R. 13. Date of order when drawn up.

If the party served with a notice of motion does not appear on the hearing, the order is usually made subject to an affidavit of service of the notice being filed.

By Rule 14, "Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (a) for the issue of any writ other than a writ of attachment, (b) for the amendment of any writ or pleadings, (c) for the filing of any document, or (d) for any act to be done by any officer of the Court other than a solicitor, it shall not be necessary to draw up such order unless the Court or a judge shall otherwise direct; but the production of a note or memo- R. 14. What orders need not be drawn up.

randum of such order, signed by a judge, registrar, master, chief clerk, or district registrar, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this rule had not been made, have been required to be served with such order."

This does not include the issue of a writ of summons for service out of the jurisdiction, which requires an order to be drawn up. In the Probate Division an order is drawn up to amend writ or pleadings.

Probate of will in district registry after grant on motion.

If it is proposed to prove any will in a district registry after probate granted on motion, a copy of the will must be deposited in the principal registry, and the original will will be transmitted by the principal registrars on filling up a form with a 2*d.* fee for registration, requesting them to do so, and specifying the district. The form is obtained in the Contentious Department.

Matter properly brought before Court on motion.

The following are some of the principal cases in which the Court is asked to make a grant on motion:—

By consent as to omitting portion of testamentary document from probate.

(1) Where it is doubtful whether some portion of a testamentary document ought or not to be admitted to probate. In this case it is necessary for all the parties to consent, otherwise the will must be propounded.

(2) Where an application is made for a grant by a person having an inferior right to it, and the parties having the superior right have not renounced.

In these cases all persons having a superior title to a grant must be duly cited to accept or refuse it. An affidavit of service of the citation, and an affidavit of search for appearance, and the renunciation of any of the parties who may renounce, must be filed with the motion papers.

(3) Where a will has been lost, and all parties consent to a draft or copy or an affidavit setting forth the contents of the will being admitted to probate. Lost will.

(4) Where the death of a testator or intestate is uncertain and can only be proved by presumptive evidence. Presumption of death.

(5) For an order for attachment for contempt of Court, which may arise out of *non-contentious*, as well as *contentious*, *business*. Order for attachment.

(6) For an order for the production of papers or writings purporting to be testamentary. Order for production of papers, &c.

The usual practice is not to proceed by motion, but to issue a subpœna to bring in the will (see *post*, p. 373). See also Court of Probate Act, 1857, sect. 26, and Rule 73, C. B.

(7) For a grant *ad colligenda bona*. *Ad colligenda bona.*

(8) For a grant of administration under the 73rd section of the Court of Probate Act, 1857. C. P. Act, 1857, s. 73.

(9) For a limited grant where the applicant is entitled to a general grant. For limited grant where applicant entitled to general grant.

(10) For a grant *durante absentiâ*. *Durante absentiâ.*

(11) For a grant where the matter has been referred to the Court by the registrar or where the registrar refuses to make a grant. Matter referred to Court by registrars.

(12) For an order to dispense with sureties to an administration bond, or to limit their liability, or to reduce the penalty on the bond, or to allow a substitute to execute it for the administrator. For order to vary an administration bond.

(13) For an order for the appointment of an administrator *pendente lite* or a RECEIVER. Administrator *pendente lite* or receiver.

(14) For a grant to the solicitor to his Majesty's Treasury, or to the solicitor to the Duchy of Lancaster, or to the solicitor to the Duchy of Cornwall, of administration to the estate of a bastard or other person who has died intestate

leaving no known relatives or other persons entitled to his estate.

(15) Grants for a particular object or purpose.

(16) To a creditor after citation has issued (see Citations).

(17) For revocation of probate on letters of administration which have been granted erroneously or by mistake, unless the parties agree to an order for revocation by the registrar (see Notations).

(18) Injunctions.

Whenever grant required under special circumstances motion necessary.

And it may be further stated, generally, that whenever a grant is required under exceptional circumstances a motion to the Court becomes necessary.

Pro formâ motions.

Pro formâ motions for probate are not uncommon, the object being to avoid misunderstanding, and possibly litigation, about the instrument between legatees. As where a paper writing, purporting to be a will, appears clearly from the affidavits of the attesting witnesses to have been not duly executed, and a person appointed executor by it is desirous of obtaining the decision of the Court that it is inoperative as a will, he may do so by moving the Court to decree probate (*b*).

Striking out defence, real question one of legitimacy, Court refused to do this on motion.

In an interest suit, where the real question in dispute was the legitimacy of the defendant, the Court refused to strike out the defendant's defence on motion, holding that this was too serious a matter to be decided in that way, but must be decided by evidence in the course of the action (*c*).

For grant on behalf of Duke of Cornwall facts need not be verified by affidavit if set forth sufficiently in warrant.

On an application for a grant of administration to the effects of an intestate on behalf of H.R.H. the Prince of Wales as Duke of Cornwall, it is not necessary that the facts should be verified by affidavit if they are sufficiently set forth in the warrant (*d*).

(*b*) *Jackson, In goods of* (1859), 28 L. J. P. 32.

(*c*) *Harrington, In goods of*, 63 L. T. 228.

(*d*) *Griffith, In goods of* (1884), 9 P. D. 63; 53 L. J. P. 30, 32.

Attachment.

Attachment, Motion for.—The Court of Probate has power to attach a person for non-compliance with certain orders. (See *post*, discovery and inspection subpœna to bring in a will; affidavit of scripts; citation to bring a grant of probate or administration.)

Ord. XLIV. r. 1. Attachment.

By Ord. XLIV. r. 1, "A writ of attachment shall have the same effect as a writ of attachment issued out of the Chancery Division has heretofore had."

R. 2. Not without leave.

By Rule 2, "No writ of attachment shall be issued without the leave of the Court or a judge, to be applied for on notice to the party against whom the attachment is to be issued."

By Ord. XII. r. 4, "A judgment for the payment of money into Court may be enforced by writ of sequestration, or, in cases in which attachment is authorised by law, by attachment."

Judgment to do or abstain from any act.

Rule 7. "A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal."

Service of order.

Where the application for the writ of attachment is for non-compliance with an order, such order must be personally served and indorsed as required by Ord. XLI. r. 5.

"If you, the within-named A. B., neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (or order)."

If it is not practicable to serve the party liable to be attached with the order, leave must be obtained from the Court for substituted service.

Attachment, practice on.

In the Probate Division, an application to attach any person must be by motion in open Court, and the notice of motion should be personally served. The Court, however, may accept proof of service on the party's solicitor,

provided the original order has been personally served on the party. (*Browning* v. *Sabin*, 5 C. D. 511; *Joy* v. *Hadley*, 22 C. D. 571.) Sufficient reason must be shown for not personally serving the notice.

The affidavits in support of the motion must state that the order has not been complied with, and that the order was duly endorsed. The application for attachment will be refused unless the order was so endorsed. (*In the goods of Bristow*, 66 L. T. 60, Probate.)

The party who has obtained the order for the writ prepares the document, and brings it into the registry. (Rule 108.)

The usual practice is not to issue the writ at once, but to allow it to lie in the registry for a certain number of days, in order to give the party an opportunity of complying with the order. (A form of writ is given in the Appendix, p. 914.)

If the person against whom the writ has issued does not comply with the order within the time limited, the solicitor files an affidavit of service of the order and of non-compliance, and the registrar then issues the writ.

Discharge of party in contempt.

Any person in custody under a writ of attachment may apply for his or her discharge to the judge, if the Court be then sitting; if not, then to one of the registrars, who for good cause shown shall have power to order such discharge. (Rule 109.)

Attachment for contempt.

The following are some of the principal reported cases which have been decided in the Probate Court and Probate Division on the subject of attachment for contempt in disobeying an order of the Court.

Executor intermeddling without taking probate.

Where the executors of a will intermeddled, without taking probate of the instrument, a citation having been served upon them to enter an appearance and take probate, they entered an appearance but took no further steps in the matter. The Court refused to attach them for contempt in the first instance, but directed a peremptory

order to be served upon them to take probate within ten days from the date of the order (*e*).

Married woman refusing to file inventory.

A married woman may be attached for non-compliance with a citation, calling upon her to file an inventory in the registry of an estate of which she is administratrix (*f*).

The Court granted an order for an attachment against A. for disobedience of a subpœna to bring in a will; but directed that the attachment should lie in the registry for eight days after notice to A. of its having been issued, before proceedings should be taken to enforce it (*g*).

Disobedience to subpœna to bring testamentary paper into registry.

When a subpœna has been personally served upon an individual to bring in a testamentary paper, and such individual fails to comply therewith, the Court may make a preliminary order that he shall attend in Court to be examined in reference to his possession of such paper (*h*) before issuing a writ of attachment.

As to payment of costs before discharge from custody.

An administrator in custody under an attachment, obtained by the persons entitled in distribution, for not filing an inventory, is not entitled to be discharged from custody upon his filing such inventory, except on payment of costs (*i*).

Disobedience to order to pay money.

As the Court no longer attaches for contempt for disobedience to an order to pay money only, the cases coming under that head are no longer precedents, and have therefore been omitted.

Persons acting in a fiduciary capacity. Debtors Act, 1869.

Persons, however, acting in a fiduciary capacity are not considered to be protected by the Debtors Act (*k*).

(*e*) *Mordaunt* v. *Clarke* (1869), L. R. 1 P. & D. 592; 38 L. J. P. 45; 19 L. T. 610; see also *Lister, In goods of* (1894), 70 L. T. 812.

(*f*) *Baker* v. *Baker* (1860), 2 S. & T. 380; 29 L. J. P. 138.

(*g*) *Simmons* v. *Deane* (1858), 27 L. J. P. 103.

(*h*) *Parkinson* v. *Thornton* (1868), 37 L. J. P. 3.

(*i*) *Marshman* v. *Brookes* (1863), 32 L. J. P. 95.

(*k*) *Tinnuchi* v. *Smart* (1885), 10 P. D. 184; 54 L. J. P. 92.

Receiver and Administrator Pendente Lite.

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 70.

By the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 70, "Pending any suit touching the validity of a will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person, and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate, and every such administrator shall be subject to the immediate control of the Court, and act under its direction."

Ibid., s. 71.

And by sect. 71, "It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the Court touching the validity of the will of any such deceased person, by which his real estate may be affected; and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate as the Court may direct."

Ibid., s. 72. Remuneration to administrators *pendente lite* and receivers.

And by sect. 72, "The Court of Probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court think fit."

C. P. Act, 1858 (21 & 22 Vict. c. 95), s. 22. Administration pending suit deemed to apply to appeals.

By sect. 22 of the Court of Probate Act, 1858 (21 & 22 Vict. c. 95), "All the provisions contained in the Court of Probate Act, respecting grants of administration pending suit, shall be deemed to apply to the case of appeals to the House of Lords under the said Act."

C. P. Act, 1858, s. 21. The Court of Probate may require security from

And by sect. 21, "It shall be lawful for the Court of Probate to require security by bond, in such form as by any rules and orders shall from time to time be directed, with or without sureties, from any receiver of the real estate of any deceased person appointed by the said Court,

under sect. 71 of the Court of Probate Act; and the Court may, on application made on motion, or in a summary way, order one of the registrars of the Court to assign the same to some person to be named in such order; and such person, his executors or administrators, shall thereupon be entitled to sue on the said security, or put the same in force in their or his own name or names, both at law and in equity, as if the same had been originally given to him instead of to the judge of the said Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount due in virtue thereof." a receiver of real estate.

By Rule 79, Contentious Business, "A receiver of real estate pending suit is to give bond in the form given, No. 29, or in a form as near thereto as the circumstances of the case will admit of, with two sureties, and in a penalty of such an amount as may be directed by the judge." R. 79, C. B. Receiver of real estate.

The amount of the penalty is now usually settled by the registrar. (Form of bond, p. 964.)

By Rule 96, Contentious Business, "Every administrator *pendente lite* and receiver of real estate shall exhibit an inventory and render an account of the property of the deceased which comes to his hands, and the accounts of every such administrator and receiver shall be referred to the registrars of the principal registry for investigation and report, before the same are allowed by the Court, unless the judge shall otherwise direct; and the foregoing rules and orders respecting the taxation of costs shall, so far as the same are applicable, be observed with respect to the investigation of such accounts, and any other accounts referred to the registrars for examination." R. 96, C. B. Accounts of administrators and receivers pending suit.

Application is made by motion to the Court, supported by affidavits showing the nature and value of the estate, and the object and necessity of appointing a receiver or administrator *pendente lite*. If the parties agree as to the person to be appointed, the judge appoints the party nominated. If the parties do not agree, it is usually referred to the registrar to make the appointment. The Practice as regards receiver or administrator.

order, when made, is taken to the seats, and the grant proceeds in the ordinary way.

Receiver of Real Estate.—No grant is made to a receiver of real estate; but after the Court has granted leave for the appointment, an order is made by the registrar, which is taken to the sealer to be sealed, and is equivalent to a grant. Fee for order, 1*l.*, to be paid in the Contentious Department. (For form of bond by a receiver of real estate, see Appendix, p. 964.)

The Court will not appoint a receiver or administrator *pendente lite* unless there is a *lis pendens*. (*Salter* v. *Salter*, (1896) P. 291; 65 L. J. P. 117; 75 L. T. 7.)

Injunctions and Mandamus.

Ord. L. r. 1A. Interlocutory orders as to mandamus, injunctions, or interim preservation of property, &c. Early trial of cause.

By Ord. L. r. 1A, "Whenever an application shall be made before trial for an injunction or other order, and on the opening of such application, or at any time during the hearing thereof, it shall appear to the judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, it shall be lawful for the judge to make an order for such trial accordingly, and to direct such trial to be held at the next or any other assizes for any place, if from local or other circumstances it shall appear to him to be convenient so to do, and in the meantime to make such order as the justice of the case may require."

R. 2. Order for sale of perishable goods, &c.

By Rule 2, "It shall be lawful for the Court or a judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the Court or judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once."

R. 3. Detention, preservation, or inspection of property, the subject of an action.

By Rule 3, "It shall be lawful for the Court or a judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any pro-

perty or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence."

R. 6. Application under J. A. 1873, s. 25 (8), or Rules 2 or 3, *supra*.

By Rule 6, "An application for an order under sect. 25, sub-sect. 8, of the principal Act, or under Rules 2 or 3 of this Order, may be made to the Court or a judge by any party. If the application be by the plaintiff for an order under the said sub-sect. 8, it may be made either *ex parte* or with notice, and if for an order under Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application."

J. A. 1873, s. 25 (8).

Judicature Act, 1873, *sect.* 25 (8).—This sub-section provides as follows:—

"A mandamus or an injunction may be granted, or a receiver appointed, by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of

title; and whether the estates claimed by both or by either of the parties are legal or equitable."

Ord. L. r. 11. Injunction to be by judgment or order.

By Rule 11, "No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had."

Presumption of Death (*l*).

In cases of presumption of death, it should be borne in mind that the Court never acts on any affidavit that is uncorroborated, and exercises the utmost vigilance.

Present practice of Probate Division in cases of presumption of death.

An affidavit of some member or members of the family of the deceased is required by the present practice of the Court, and, if such cannot be obtained, an affidavit should be made to that effect.

Advertisements.

Any advertisements which may have been inserted in the newspapers for the purpose of finding the deceased ought to be filed for the information of the judge; and all letters from the deceased or others, tending to throw light upon the matter, should be made exhibits to the affidavits.

The originals are usually delivered out afterwards, upon application to the registrar, to the parties entitled to them. Sometimes it is ordered to leave copies and give an undertaking to return the originals if required.

It must be shown on affidavit whether or not the life of the deceased was insured.

Notice to insurance company.

This practice was first introduced in 1880 by Lord Hannen, who, in the course of an unreported case heard in that year, said, "Without laying it down as an absolute rule of practice, I think this ought to be done in every case."

And this dictum has been taken up and carried further, so that the rule as to notice to insurance offices has now become obligatory in every case. If there is no insurance it should be so stated in the affidavit.

(*l*) See Wms. on Exors. 10th ed. pp. 234, 235, 324, 373, 644, 955, 1161.

So, where the estate of a person whose death the Court was asked to presume consisted in part of a policy of insurance on his life, the Court ordered that notice of the application should be given to the insurance office (*m*).

Court will not presume the death of a person other than the person whose estate is in dispute.

It is contrary to the practice of the Court to presume the death of a person other than the person whose estate is in question. Therefore, where a married woman died intestate, the Court refused to presume the death of her husband (*n*). It would seem that the proper course in such a case would be to cite the husband by advertisement.

Every effort must be made to find deceased.

It may be taken as a general rule that the Court will not presume the death of a deceased person, unless fully satisfied that every reasonable endeavour has been made to find him. One of the most usual modes of endeavouring to obtain information is naturally by advertisement, and the Court, if not satisfied that enough has been done in this direction, orders advertisements to issue under direction of one of the registrars.

Death presumed in Chancery Division.

In some cases, however, under special circumstances, the Court has dispensed with advertisements (*o*).

It is a general rule of practice in the Probate Division that no death shall be presumed merely on the ground that the supposed deceased has disappeared for many years, and is probably dead. This rule applies even in cases where the supposed deceased has corresponded with his family for many years and has suddenly ceased to do so; and, *semble*, that this rule is not affected by the smallness of the estate (*p*).

Vessel lost on voyage to Demerara.

A., master of the X., sailed in her from Demerara on the 23rd of October, 1858, bound for London, the ordinary

(*m*) *Barber, In goods of* (1886), 11 P. 78; 56 L. T. 894.

(*n*) *Clark, In goods of* (1890), 15 P. D. 10; 59 L. J. P. 6; 61 L. T. 653.

(*o*) *Norris, In goods of* (1858), 1 S. & T. 6; 27 L. J. P. 4; *Main, In goods of* (1858), 1 S. & T. 11; 27 L. J. P. 5.

(*p*) *Robertson, In goods of*, (1896) P. 8; 65 L. J. P. 16; see also *How, In goods of* (1858), 1 S. & T. 53; 27 L. J. P. 37; *Turner, In goods of* (1864), 3 S. & T. 476; 33 L. J. P. 180.

duration of the voyage being five or six weeks; a few days after sailing a hurricane passed over the West Indian Islands, in which it was supposed the X. and all hands had been lost, neither the vessel nor any of the crew having been heard of since the vessel sailed. The Court rejected a motion made on the 30th March, 1859, for a grant of administration of the effects of A. as premature; but on 22nd June, 1859, the underwriters having then paid the amount insured on the vessel, and nothing having been heard of either her or any of the crew, administration was granted (*q*).

Payment by insurers not alone sufficient for presumption of death.

But, although payment by the insurers may presuppose a total loss of the *ship*, it does not follow that all the *crew* are drowned; and inquiries, in general, should be made at the port of departure for any of the missing crew (*r*).

Not heard of for seven years.

A bachelor, who had gone to Australia, had not been heard of for seven years. His father died intestate about two years and five months before the expiration of the seven years, and no administration had been taken out to him. It being uncertain whether he died before or after his father, the Court granted administration of his effects to his sister without requiring administration to the father to be taken out (*s*).

Voyage of ten weeks. Grant after twelve months.

On the 27th of January, 1857, M., master of the ship B., sailed in her on a ten weeks' voyage. Nothing having been seen or heard of the ship or of any of her crew since she sailed, and the underwriters having paid for her as for a total loss, it was held the death of M., in or since January, 1857, might be presumed. This motion was made the 28th January, 1858 (*t*).

History of deceased traced up to a certain point.

N., intending to come to England, sailed on 1st July, 1856, from New Zealand in a ship bound for Sydney; the ship never arrived at Sydney, nor was anything ever heard

(*q*) *Bishop, In goods of* (1859), 1 S. & T. 303; 28 L. J. P. 93.

(*r*) *Smyth, In goods of* (1859), 28 L. J. P. 1.

(*s*) *Peck, In goods of* (1860), 2 S. & T. 506; 29 L. J. P. 95.

(*t*) *Main, In goods of* (1858), *supra*, note (*o*).

of her or the crew after she set sail; some heavy gales having occurred at the time she would have been on her voyage and in her direct course, it was supposed that she had foundered with all hands. Held, that under the above circumstances, as N.'s history was known and traced to within a short distance of his being last heard of, advertisements were unnecessary, and that his death was to be presumed (*u*).

It appears to have been ruled in the Prerogative Court, that where the husband and wife are drowned in the same ship they must be presumed to have perished at the same moment, unless proof can be obtained as to the exact time of the death of either (*x*). At all events, in such cases, in order to entitle the husband to the wife's property, it must be proved that he survived her; and, consequently, the administration thereof must be granted to her next of kin, if his representative cannot give any such proof (*y*).

A husband and wife executed identical wills, each appointing the other universal legatee and sole executor. Both were drowned in the same ship, and there being no evidence that one survived the other, the Court made a grant to the next of kin of each (*z*).

Where a foreign Court of competent jurisdiction had presumed the death of an intestate, the Court presumed his death without requiring independent evidence (*a*).

Where a letter was received from an insurance company

(*u*) *Norris, In goods of* (1858), *supra*, note (*o*).

(*x*) Wms. on Exors. 10th ed. p. 324; citing *Selwyn, In goods of* (1831), 3 Hagg. 784; 1 Curt. 705; *Underwood* v. *Wing* (1855), 4 De G. M. & G. 633; 24 L. J. Ch. 293.

(*y*) *Ibid.*; citing *Satterthwaite* v. *Powell* (1836), 1 Curt. 705; *Wheeler, In goods of* (1862), 31 L. J. P. 40; see also *Taylor* v. *Diplock* (1815), 2 Phill. 261; *Wainwright, In goods of* (1858), 1 S. & T. 257; 27 L. J. P. 2; *Grinstead, In goods of*, 21 L. T. 731; *Beynon, In goods of*, (1901) P. 141; 70 L. J. P. 31; 84 L. T. 271.

(*z*) *Alston, In goods of*, (1892) P. 142; 61 L. J. P. 92; 66 L. T. 591; see also *Johnson, In goods of* (1898), 78 L. T. 85.

(*a*) *Spenceley, In goods of*, (1892) P. 255; 61 L. J. P. 133.

consenting to a motion for presumption of death, the Court ordered the letter to be filed with the papers (*b*).

Where on a motion for presumption of death an affidavit referred to letters from the presumed deceased which were not produced or accounted for, and did not explain the delay which had occurred in making the application, and there was no corroborative evidence of belief of the death, the Court adjourned the motion for further evidence (*c*).

The Court, on proof of sufficient inquiries, allowed the death of a testator to be sworn three years after his disappearance (*d*); and, in a subsequent case, where a grant was necessary for the purpose of Chancery proceedings and the supposed deceased had been heard of within seven years, the Court made the grant, but ordered that, except in so far as it might be required in the Chancery Division, it should remain in the registry until the expiration of seven years from the date of disappearance (*e*).

In motions for presumption of death, the affidavit of the applicant should state his or her belief that the presumed deceased died on or since the alleged date of death (*f*).

No motion required in small estates.

If the whole estate is sworn not to exceed 100*l*., no motion to the Court is required. The registrar will make the order upon production of sufficient evidence as to the death of the person.

Deceased lost at sea.

Where a motion is made to the Court to presume the death of a person at sea in consequence of the loss of a vessel, the following evidence is usually required:—

(1) The fact that the person was on board the vessel when it sailed from its last port.

(2) That the vessel has not arrived at the port to which she was bound.

(*b*) *Saul, In goods of*, (1896) P. 151; 65 L. J. P. 101.

(*c*) *Clarke, In goods of*, (1896) P. 287; 66 L. J. P. 9.

(*d*) *Matthews, In goods of*, (1898) P. 17; 67 L. J. P. 11; 77 L. T. 630.

(*e*) *Winstone, In goods of*, (1898) P. 143; 67 L. J. P. 76; 78 L. T. 535.

(*f*) *Hurlston, In goods of*, (1898) P. 27; 67 L. J. P. 69; see also *Jackson, In goods of* (1903), 87 L. T. 747.

(3) Any evidence which can be procured as to when the vessel was last seen or heard of.

(4) Whether the ship or cargo was insured, and, if insured, that the insurance has been paid as for a total loss.

The application should be supported by an affidavit of the owner or agent of the vessel stating all the facts material to the case.

If a motion has already been granted by the Court in respect of the estate of a person who has died in the wreck or loss of a ship, no motion is again required in respect of the same ship. The registrar will make the necessary order presuming the decease, upon sufficient evidence being produced that the person was on board the ship.

Regulations as to Motions.

A case on motion is always required.

All papers for motions, whether original or adjourned, cases, affidavits, exhibits, original wills, notices, &c., must be deposited in the Contentious Department not later than 2 o'clock for the following Monday.

If any papers are required which have been deposited in another department, or in a former application or action, they must be looked up, and deposited in the Contentious Department.

No motion, whether postponed or adjourned by the Court or by the parties, will be put in the list of motions again unless a proper notice (fee 2*s.* 6*d.*, form obtained in the registry) be filed in the Contentious Department as for an original motion before 2 o'clock on the preceding Wednesday.

When permission is given for a motion to be heard on a particular day, a notice (fee 2*s.* 6*d.*) in writing must be filed in the Contentious Department, in order that the papers may be in Court.

The registrar may strike out of the motion list any case in which he is of opinion that the affidavits or papers are clearly defective or incomplete.

In order to restore a motion so adjourned, a notice (fee 2*s.* 6*d.*) must be filed.

Leave to enter a motion, after 2 o'clock on Wednesday for the following Monday, must be obtained from the registrar at Court.

Cases on motion should be as complete as possible, and contain all the facts of the case. (See Rule 124, C. B.)

Motions are heard during the sittings, by the judge, on Mondays at 10.30, unless otherwise ordered.

Appeals.

Time for appeals from the judge to the Court of Appeal is regulated by S. C. R., Ord. 58, r. 15. Three copies of the notice of appeal and three copies of the order must be filed in the Contentious Department (fee, 3*l.* 2*s.* 6*d.*). (See also chapter on Appeals, *post.*)

An appeal lies from the refusal to grant a simple administration. (*Clook, In goods of* (1890), 15 P. D. 132; 62 L. T. 607.)

Long Vacation.—A special list of days on which motions are heard is published and obtainable at the registry.

Fees on Motions.

	s.	*d.*
Case	10	0
Notice	2	6
Affidavits	2	6

Forms of notice are given, Appendix B., p. 891, and can be obtained at the registry.

All cases on motion, affidavits and notices, should be headed, "In the estate of C. D., deceased."

Orders on motion are not given out to the parties, but copies can be obtained on application.

CHAPTER IX.

CITATIONS AND SUBPŒNA.

Citations, Practice as to.

A CITATION is a command issued from the principal registry, for the most part ordering the party to whom it issues and on whom it is served to do some particular act, as, *e.g.*, to accept or refuse probate or administration; to see proceedings, that is, to become a party to the suit, in case the party on whom the citation is served thinks it to his interest to do so. Citations, definition of.

The order must be in the alternative, viz., to do the act ordered, or to show cause why he should not obey. It was held in the case of *Ackerley* v. *Parkinson* (*a*), that if it leaves no option to the party cited but obedience to its requisitions, it is a nullity. The command to bring in a probate certainly leaves no option literally. The probate must be brought in to the principal registry, but as the object is to bring in the probate, in order that its validity may be ascertained, the party cited has an opportunity (if he thinks fit) of showing cause why the probate, when so brought, should not be revoked, so that this still seems substantially to fall within the rule laid down in the above case. Must give option of obeying or showing cause.

Again, if a grant in either form has issued, either of probate or administration, the proper course to pursue is to issue a citation to bring the grant into the registry. Citation to bring in grant.

From the preceding it will be seen that citations are of an infinite variety, adapted to the necessities of each case, Citations adapted to various cases.

(*a*) 3 M. & S. 411.

and all resulting from the principle that every person who has an interest in a grant, whether of probate or administration, has a right to call on every party whose right to the grant precedes his own, to exercise that right, and in the event of the citation being unheeded, the right, as it were, passes on to the party citing.

Origin of citations to accept or refuse grant.

This right is the origin of citations to accept or refuse grants, and may be issued *against* executors or residuary legatees under a will, or against the widow, next of kin, or parties entitled in distribution; where there is no will they may be issued *by* legatees of creditors, or the representatives or nominees of creditors; in fact, by any person whose right is or may be affected by the grant.

Again, if an executor intermeddle with the goods of the deceased, he may be ordered to bring in the will. A subpœna must first issue to bring in the will, and then a citation must be extracted to order him to refuse or accept probate.

Probate Rules, N.-C. B., 68, 69, 70. C. B. rr. 13—22.

The rules affecting citations are Rules 68, 69, and 70, Probate Rules, Non-Contentious Business, and Rules 13 to 22, Contentious Business, both inclusive.

Ibid., District Registry, rr. 79, 80.

As citations are only extracted from the principal registry, there is, of course, no reference to them in the district rules beyond the Rule 79, District Registry, which instructs the district registrar as to that fact, and Rule 80, District Registry, which forbids the issue of a grant from a district registry after a citation, without the production of an office copy of the decree or order of the judge, or of one of the registrars of the principal registry, authorizing the same.

Probate Rules, C. B. R. 13.

By Rule 13, Contentious Business, "Citations can only be extracted from the principal registry, and no citation is to issue under seal until an affidavit in verification of the averments it contains has been filed in the registry"; and

R. 68, P. R. N.-C.

Rule 68, Probate Rules, Non-Contentious Business, contains the same provisions as to the filing of the affidavit.

The following are the most usual citations:—

(1) To bring in a grant of probate or administration.

(2)—(a) To an executor to refuse or accept probate.

(b) To the next of kin to refuse or accept administration.

(3) To see proceedings.

Practice as to citations.

Citations do not issue as a matter of course in the Probate Division. It is the inherent part of the practice of the Court, that every one before extracting a citation should show in the affidavit, which leads the citation, the character in which he does it, and thereby the interest which justifies it. (See judgment of Lord Penzance in *Chamberlain, In goods of* (1867), 1 P. & D. 316; 36 L. J. P. 52; 16 L. T. 97.) The practice in the case of all citations is for the solicitor in the first instance to bring into the Contentious Department a draft citation (no fee), which is sent up to the registrar for settlement, and is called for in the Contentious Department in about two days. The solicitor then brings in a fair copy of the citation, together with the draft, an affidavit to lead to the citation, and a præcipe (with 10*s.* stamp affixed). The affidavit is founded on the draft as settled by the registrar. The citation is then signed by the registrar and sent to the sealer, by whom it is sealed, and is called for there (Room 64).

Citations are not now required to be written on parchment.

A caveat must be entered before a citation issues, except in the case of a citation to see proceedings.

After a citation has issued no grant can be made, except by order of the Court or a registrar.

All citations must be served personally, unless some other mode of service is directed. It is contrary to the practice of the Court to allow a citation to be served by the party who has extracted it (*Glyde* v. *Davie* (1864), 33 L. J. P. 184).

Service of, on infants, &c.

Citations should be served on infants and minors in the

presence of their guardians (*b*), and personal service of a citation on the committee of a lunatic is sufficient (*c*).

Service by advertisement.

If it has been found impossible to serve a party personally by reason of his residing out of the jurisdiction, or from any other cause, the registrar settles an abstract of the citation, and orders it to be served by advertising in the papers as he shall direct; the usual practice being to advertise in three newspapers at intervals of a fortnight, and such newspapers are subsequently filed.

A form of abstract is obtained in the Contentious Department, and left by the practitioner (with a 10*s.* stamp affixed) to be settled by the registrar.

Citation by advertisement.

The proper form of affidavit that a person resident abroad, and cited by advertisement, has no agent in England, is, that he has no attorney, agent, or correspondent in England (*d*).

Appearance to citation.

Appearance to a citation is entered in the Contentious Department, except an appearance to see proceedings, which is entered at the Central Office. The appearance must set forth the interest the party has in the estate of the deceased. The time limited for appearance to a citation is usually eight days, and is exclusive of Sundays, Christmas-day, and Good Friday. (Rule 91, C. B.)

Citation to issue with writ of summons.

Every suit for revocation of a grant of probate or administration must commence with a citation (which must issue either before or concurrently with the writ of summons), calling on the party who has obtained the grant to bring the same into the registry, "*there to abide the order of the Court.*"

(*b*) See *Johnson* v. *Weldy* (1861), 2 S. & T. 313; 30 L. J. P. 170; 5 L. T. 118; *Brown* v. *Wildman* (1859), 28 L. J. P. 54; *Cooper* v. *Green*, 2 Add. 454; *Lean* v. *Viner* (1864), 3 S. & T. 469; 33 L. J. P. 88; *Lainson* v. *Naylor* (1860), 2 S. & T. 7; 29 L. J. P. 126; *Sprigg* v. *Banks*, 4 No. of Cas. Ecc. 102.

(*c*) *Surtees, In goods of* (1859), 28 L. J. P. 89.

(*d*) *Kenworthy* v. *Kenworthy* (1863), 3 S. & T. 64; 32 L. J. P. 107; 8 L. T. 470. See also *Evans* v. *Burrell* (1859), 4 S. & T. 185; 28 L. J. P. 82.

The grant of probate or administration, when brought in, is left in the Contentious Department.

The party cited and failing to comply with the citation is liable to attachment. The citation must be endorsed with usual notice under Ord. XLI. r. 5.

No appearance to citation.

Where a citation was personally served upon the executor and universal legatee named in a will of the deceased, calling upon him to bring into the registry the probate of it, which had been granted to him, and to show cause why the probate should not be revoked and declared null and void, and the will itself declared null and invalid; the probate was brought into the registry, but no appearance entered to the citation; the Court, although there was no evidence before it as to the invalidity of the will, revoked the probate granted, and ordered probate of an earlier will to issue in common form to the executor named therein. (*Crosby* v. *Noton* (1867), 36 L. J. P. 55; 16 L. T. 153.)

Citation to Refuse or Accept.

Before the citation issues the will must be brought into the registry. If the will is not in the possession of the party issuing the citation, he must issue a subpœna to the person in whose possession it is to bring it into the registry, and the citation issues afterwards.

The party cited may either renounce or take the grant or consent to a grant being taken by the citant. If he is willing to take the grant he must enter an appearance in the Contentious Department (notice of which must be sent to the citant) and file an affidavit that he has appeared and is desirous of taking the grant. The registrar then makes an order for the grant to issue, provided no other proceedings have been taken. If an appearance is entered, but the grant is not applied for within a reasonable time, a summons may be taken for the party appearing to take the grant within a limited time. And on the order being made, if the party does not comply, the registrar orders the grant to be made to the party next entitled.

If an executor named in a will has been cited, and does not appear to the citation, after having been duly served, it is equivalent to a renunciation. (See C. P. Act, 1858, s. 16.) The citant, in default of appearance, applies to the Court by motion for a grant. A case on motion must be filed, and an affidavit of service (with the citation annexed), and an affidavit of search for appearance. If the service is by advertisement the newspapers must be filed, together with the abstract.

An affidavit of service of a citation should identify the citation served: an affidavit of search and non-appearance should state when the search was made; and if two persons have been cited and neither have appeared, it should state that no appearance has been entered by or on behalf of "either of them" (*e*).

If the parties cited renounce, the renunciation must be filed with the motion.

If none of the next of kin take out administration, or if they renounce or fail to appear to a citation, a creditor is entitled to do so. If there are no next of kin, as in the case of an intestate bastard, notice of the application must be given to the King's Proctor. Where the estate is small, or the debts exceed the estate, the King's Proctor does not generally interfere, but allows the grant to go.

Notice to King's Proctor.

Similarly, in the case of a will, a creditor is entitled to grant of administration with the will annexed, if the parties with a superior title fail to appear to a citation or renounce.

The creditor must apply by motion to the Court.

If the next of kin and all other parties entitled renounce or consent, no motion is necessary to obtain a grant.

In all cases affecting real estate the heir-at-law must be cited. (See Rule 78, C. B.)

In real estate heir-at-law must be cited.

Citations to see Proceedings.

Citations to see proceedings issue after the writ of summons, and are not binding on the parties cited unless

(*e*) *Harenc* v. *Dawson* (1863), 3 S. & T. 50; 32 L. J. P. 94.

they are personally served. An appearance is entered at the Central Office. Citations should be issued against all the next of kin and all other persons whose interests are adversely affected by the action.

But if a party is cognizant of the proceedings and has an opportunity of entering an appearance and intervening, and fails to do so, he will be bound by the result of the action, unless a compromise is entered into without notice to him. (*Wytcherley* v. *Andrews* (1871), 2 P. & D. 328; 40 L. J. P. 57; and *Young* v. *Holloway*, (1895) P. 87; 64 L. J. P. 55.)

Affidavit in support for leave to cite persons interested in realty.

An affidavit upon which an application to cite the persons interested in the real estate affected by a will in dispute is based, must state not only that it disposes of real estate, but that it was executed according to the law of England, and at a date since the Wills Act came into operation (*f*).

Citations—Rules.

The following rules apply to citations:—

Probate Rules, R. 15, C. B. Caveat to be entered before issue of citation.

By Rule 15, Contentious Business, "Before a citation is signed by the registrar a caveat shall be entered against any grant being made in respect of the estate and effects of the deceased to which such citation relates, and notice thereof shall be sent to the registrar of any district in which the deceased appears to have had a residence at the time of his death. Such caveat is to be renewed from time to time, so as to be kept in force so long as the proceedings arising from the service of the citation are pending."

No caveat is required to a citation to see proceedings.

R. 16, C. B.

By Rule 16, Contentious Business, "Citations to see proceedings may be extracted from the registry, on the application of any party to the cause."

(*f*) *Campbell* v. *Lucy* (1871), L. R. 2 P. & D. 209; 40 L. J. P. 22; 24 L. T. 231.

R. 17, C. B.

By Rule 17, Contentious Business, "Every citation shall be written or printed on parchment,* and the party extracting the same, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 5, to the registry, and there deposit the præcipe, and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post Office."

* Parchment no longer required.

R. 18, C. B.

By Rule 18, Contentious Business, "Citations are to be served personally when that can be done, the party cited being resident in Great Britain or Ireland, but if personal service cannot be effected the direction of the judge or registrars as to the mode of service must be obtained. Personal service shall be effected by leaving a true copy of the citation with the party cited, and showing such party the original, if required by him so to do."

Rr. 69, 70, N.-C.

Rules 69 and 70, Probate Rules, Non-Contentious Business, are to the same effect.

R. 19, C. B.

By Rule 19, Contentious Business, "Citations may be served upon parties resident out of Great Britain and Ireland by the insertion of the same or of an abstract thereof, settled and signed by one of the registrars, as an advertisement, in such of the morning and evening London newspapers, and if necessary in such local newspapers, and at such intervals as the judge or a registrar may direct: provided that in any case the judge or a registrar may direct a citation to be served personally. If the party cited be abroad, having an agent resident in England, such agent must be served with a true copy of the citation."

R. 20, C. B. Proceedings after service of citation.

By Rule 20, Contentious Business, "Before a party can proceed after the service of a citation, an appearance must have been entered by or on behalf of the party cited, or an affidavit of personal service, and of non-appearance, must, together with the citation, have been filed in the registry, or if personal service has not been duly effected, the order of the judge, or of one of the registrars in his absence, founded on an affidavit, and giving leave to proceed, must

have been obtained. In case the citation has been advertised, the newspapers containing the advertisement, together with the citation and an affidavit of non-appearance, must be filed in the registry."

By Rule 21, Contentious Business, "The above rules, so far as they relate to the service of citations, are to apply to the service of all other instruments requiring personal service." R. 21, C. B.

By Rule 22, Contentious Business, "If contentious proceedings arise from the service of a citation, the expense of the citation and service thereof shall, upon taxation, be considered as costs in the cause." R. 22, C. B.

By Rule 26, Contentious Business, "All appearances are to be entered in the principal registry in a book provided for the purpose, and kept by the clerk of the papers (now the Contentious Department). The entry must set forth the interest which the person on whose behalf it is entered has in the estate and effects of the deceased." R. 26, C. B.

And by Rule 27, Contentious Business, "The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post Office" (*g*). R. 27, C. B.

Forms of citation are given in the Appendix, p. 954.

Subpœna to bring in a Will.

Subpœna to bring in a Will or Testamentary Paper.—It has been thought convenient to include subpœnas in the chapter on citations, as they are somewhat similar in nature, being an order of the Court to compel a person to do a certain act, viz., bring into the principal registry or a district registry the will or testamentary paper ordered in the subpœna. (See Rules, N.-C., 84—86, and 73, C. B.; and C. P. Act, 1857, ss. 24—26, and C. P. Act, 1858, s. 23.)

(*g*) For "General Post Office" read "Central Hall of Royal Courts of Justice," Ord. XII. r. 11.

Practice as to.

The solicitor brings into the Contentious Department an affidavit, which must state that the will is in the possession of the person against whom the subpœna is to issue, and then fills in the following form (which is obtained in the Contentious Department without fee): also a form of subpœna and a præcipe (with a 12*s.* 6*d.* stamp on it, inclusive fee for all the papers. Forms obtained in Registry, see p. 965.)

Order for Subpœna to bring in a Script.

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

(Probate.)

In the goods of , deceased.

On reading the affidavit of , sworn on the day of , 19 , and filed in the principal probate registry of this Court, whereby it appeared that a certain paper writing, being or purporting to be testamentary, to wit, , is now in the possession, within the power, or under the control of , it is ordered by the undersigned registrar that a subpœna do issue under seal requiring the said , within eight days after service thereof, to produce and bring into, and leave in the the said paper writing, under pain of the law, and the contempt thereof.

Dated the day of , 19 .

Registrar.

The registrar then signs the order, and the subpœna is sent to the sealer to be sealed, where it is called for (Room 64).

Any person served with a subpœna to bring in a testamentary paper is at liberty to enter an appearance, if he thinks fit to do so. (Rule 86, N.-C.)

If the person served with the subpœna has not got the will in his possession, he must file an affidavit explaining his inability to comply with the subpœna.

A person bringing in a will into the registry in obedience to a subpœna takes it to the record keeper, where the minute is prepared and sent up to the registrar for signature.

Attachment on failure to obey.

The party who has been duly served with a subpœna and fails to obey the order is liable to attachment. The subpœna must be endorsed with the usual notice under Ord. XLI. r. 5. But the Court does not always order an attachment to issue at once against him; it may make a preliminary order for him to attend in Court and be examined in reference to his possession of such paper. (*Parkinson* v. *Thornton* (1866), 37 L. J. P. 3.)

It is the usual practice now not to move the Court by motion to produce a will according to C. P. Act, 1857, s. 26, but to issue a subpœna.

Disobedience to subpœna—script not in solicitor's possession—contempt of Court.

Where a writ of subpœna was issued in a non-contentious matter, directing a solicitor to bring into the probate registry a script which was stated to be, but which was not in effect in his possession or control:—Held, that his non-compliance with the subpœna was not under the circumstances a contempt, that the fact that he had not followed the practice general in such cases (and compulsory in a contentious matter) of filing an affidavit explaining the reason of his non-compliance, with which practice he was acquainted, was not a contempt (*h*).

Where the executors of the solicitor of a deceased testatrix had refused to give information, as to previous wills alleged to have been executed by the testatrix, to persons who believed themselves to have been benefited by them, the Court, under the 26th section of the Probate Act, ordered them to bring into the registry all wills and testamentary papers of the deceased in their possession, and to allow applicants to take copies of them. (*Shepherd, In goods of*, (1891) P. 323; 60 L. J. P. 102.)

(*h*) *Rawlings* v. *Emmerson* (1888), 57 L. J. P. A. 1.

CHAPTER X.

PRACTICE AND PLEADING IN THE PROBATE DIVISION IN CONTENTIOUS BUSINESS.

Writ of Summons.

Ord. I. r. 1. Actions.

By Ord. I. r. 1, "All actions which, previously to the commencement of the principal Act, were commenced by writ in the superior courts of common law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which, previously to the commencement of the principal Act, were commenced by bill or information in the High Court of Chancery, or by a cause *in rem* or *in personam* in the High Court of Admiralty, *or by citation or otherwise in the Court of Probate*, shall be instituted in the High Court of Justice by a proceeding to be called an action."

Probate actions, definition of.

"Probate actions" include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business. (Ord. LXXI. r. 1, S. C. R.)

Judicature Act, 1873, s. 100. "Action."

By sect. 100 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), "cause" shall include any action, suit, or other original proceeding between a plaintiff and defendant; "suit" shall include action; and "'*Action*' shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court; and shall not include a criminal proceeding by the Crown."

Ord. I. r. 2. Proceedings other than actions and interpleader.

And by Ord. I. r. 2, "All other proceedings in and applications to the High Court may, subject to these rules, be taken and made in the same manner as they

would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if these Acts had not been passed."

Ord. II. r. 1. Commencement of actions by writ.

By Ord. II. r. 1, "Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made or of the relief or remedy required in the action, and which shall specify the division of the High Court to which it is intended that the action should be assigned."

The plaintiff in a probate action cannot include in the writ of summons a prayer for a declaration of legitimacy (*a*).

R. 2. Costs by use of prolix forms.

By Rule 2, "Any costs occasioned by the use of any forms of writs, and of indorsements thereon, other or more prolix than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court shall otherwise direct."

R. 3. Form of writ.

By Rule 3, "The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Forms Nos. 1, 2, 3, and 4 in Appendix A., Part I., with such variations as circumstances may require" (*b*).

R. 4. Writ for service out of jurisdiction, by leave.

By Rule 4, "No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a judge."

R. 5. Form of writ.

By Rule 5, "A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms 5, 6, 7 and 8, in Appendix A., Part I., hereto, with such variations as circumstances may require. Such notice shall be in one of the Forms Nos. 9 and 10 in the same part, with such variations as circumstances may require" (*c*).

(*a*) *Warter* v. *Warter* (1890), L. R. 15 P. D. 35; 59 L. J. P. 45; 62 L. T. 328.

(*b*) For these forms, see *post*, Appendix.

(*c*) For these forms, see *post*, Appendix, pp. 872, 875, 972.

R. 8. Date, &c. of writ.

By Rule 8, "Every writ of summons, and also (unless by any statute or by these rules it is otherwise provided) every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England."

Ord. III. r. 1. Time of indorsement.

By Ord. III. r. 1, "The indorsement of claim shall be made on every writ of summons before it is issued."

R. 5. Indorsement in probate actions.

By Rule 5, "In probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character."

Ord. IV. r. 1. Address of plaintiff and of his solicitor to be indorsed.

By Ord. IV. r. 1, "In all cases where a writ of summons is issued out of the Central Office, the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and also his own name or firm, and place of business, and also, if his place of business shall be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor."

Address for service.

Name of principal and agent.

R. 2. Plaintiff suing in person to indorse address for service.

By Rule 2, "In all cases where a writ of summons is issued out of the Central Office, a plaintiff suing in person shall indorse upon the writ and notice in lieu of service of a writ his place of residence and occupation, and also, if his place of residence shall be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, another proper place, to be called his

address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him."

Ord. V. r. 1. Plaintiff may issue writ out of any district registry.

And by Ord. V. r. 1, "In any action other than a probate action, the plaintiff, wherever resident, may issue a writ of summons out of any district registry."

R. 2. Issue of writs of summons out of Central Office.

By Rule 2, "Every writ of summons not issued out of a district registry shall be issued out of the Central Office."

It follows, therefore, that the writ of summons in every probate action must issue out of the Central Office in London.

R. 10. Preparation of writs.

By Rule 10, "Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as by these rules directed in the case of proceedings directed to be printed."

R. 11. Seal of writ.

By Rule 11, "Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued."

R. 12. Copy of writ left in office.

By Rule 12, "The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person."

R. 13. Entered in cause book.

By Rule 13, "The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the cause book, which is to be kept in the manner in which cause books are now kept, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such cause books."

R. 14. Notice to officer of assignment of action.

By Rule 14, "Notice to the proper officer of the assignment of an action to any division of the Court shall be sufficiently given by leaving with him the copy of the writ of summons."

R. 15. Affidavit before probate writ.

By Rule 15, "The issue of a writ of summons in probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ."

Practical directions.

Fill up the writ (form of which can be obtained from the probate registry or any law stationer), and take it, with the requisite affidavit verifying the indorsement, to the Contentious Department. The registrar, approving the affidavit, will sign the certificate on the writ, and return it to the Contentious Department, from whom the solicitor will then obtain it. The affidavit, properly indorsed, with a 2*s.* 6*d.* fee stamp affixed, is left in the Contentious Department. The solicitor then takes the writ, with a copy of it in a similar form, to the Central Office, where the one bearing the registrar's signature is kept, and the other copy duly sealed, which then becomes the original writ in the action, returned to the solicitor, who then makes a further copy of it to be left in the Contentious Department.

Ord. VI. r. 1. Issue of concurrent writ within twelve months.

By Ord. VI. r. 1, "The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word 'concurrent,' and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force."

R. 2. Service out of jurisdiction.

By Rule 2, "A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be

given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction."

Ord. VII. r. 1. Declaration by solicitor whether writ issued with his authority.

By Ord. VII. r. 1, "Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a judge."

Change of solicitor by notice.

Rule 3. "A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter, without an order for that purpose, upon notice of such change being filed in the Central Office, but until such notice is filed and a copy thereof served, and (in causes or matters pending in the Chancery Division) left in the chambers of the judge to whom the cause or matter is assigned, the former solicitor shall be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal."

It is also necessary to file the notice in Contentious Department.

Ord. VIII. r. 1. Writ to be in force for twelve months only.

By Ord. VIII. r. 1, "No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court or a judge for leave to renew the writ; and the Court or judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for

Renewal of writ for six months by

order of judge or district registrar.

six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 18 in Appendix A., Part I (*d*), with such variations as circumstances may require; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons."

R. 2. Evidence of renewal.

By Rule 2, "The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes."

R. 3. Lost writ.

By Rule 3, "Where a writ, of which the production is necessary, has been lost, the Court or a judge, upon being satisfied of the loss, and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ."

Ord. IX. r. 1. Agreement of solicitor to accept service.

By Ord. IX. r. 1, "No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance." And by Ord. XII. r. 18, if the defendant's solicitor does not enter an appearance after having undertaken to do so, he is liable to attachment.

R. 2. Mode of personal service.

By Rule 2, "When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made; but if it be made to

(*d*) See *post*, Appendix.

appear to the Court or a judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or judge may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may seem just."

Substituted service. Notice for service.

By Rule 3, "When husband and wife are both defendants to the action, they shall both be served, unless the Court or a judge shall otherwise order."

R. 3. Husband and wife.

By Rule 4, "When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or judge otherwise orders, be deemed good service on the infant; provided that the Court or judge may order that service made or to be made on the infant shall be deemed good service."

R. 4. Service of writ on infant.

By Rule 5, "When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he is, shall, unless the Court or judge otherwise orders, be deemed good service on such defendant."

R. 5. On lunatic.

By Rule 8, "In the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and every writ of summons issued against the inhabitants of a hundred or other like district may be served on the high constables thereof, or any one of them, or, where there is no high constable, on any other acting chief officer of police of the county in which such hundred or district is situate; and every writ of summons issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place, not being a part of a hundred or other like district, on some peace officer thereof: and where by any statute

R. 8. Service on corporations, &c.

provision is made for service of any writ of summons, bill, petition, summons, or other process upon any corporation, or upon any society or fellowship, or any body or number of persons, whether corporate or unincorporate, every writ of summons may be served in the manner so provided."

R. 15. Indorsement of date of service within three days.

By Rule 15, "The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

"This rule shall apply to substituted as well as other service."

Ord. X. Affidavit for substituted service.

By Ord. X., "Every application to the Court or a judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made."

An appeal from a refusal of an order for substituted service by a judge lies direct to the Court of Appeal, and is made *ex parte*. Leave must be obtained from the judge or the Court of Appeal. (See Judicature Act, 1894, s. 1.)

Ord. XI. r. 3. Probate actions.

By Ord. XI. r. 3, "In probate actions service of a writ of summons or notice of a writ of summons may by leave of the Court or a judge be allowed out of the jurisdiction."

R. 4. Application to be supported by evidence.

By Rule 4, "Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court

or judge that the case is a proper one for service out of the jurisdiction under this order."

The solicitor takes the affidavit over to the Court, to the judge who marks the affidavit; it is then brought back to the registry, and the registrar draws up the order.

R. 5. Limit of time for appearance.

By Rule 5, "Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given."

R. 6. Notice in lieu of writ.

By Rule 6, "When the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him."

R. 7. Notice in lieu of service.

By Rule 7, "Notice in lieu of service shall be given in the manner in which writs of summons are served."

Defendant foreigner resident out of jurisdiction.

If a defendant is a foreigner resident out of the jurisdiction, he must be served with notice of the writ of summons in the action (*e*).

Rule 8. Where leave is given to serve notice of a writ of summons in any foreign country to which this rule may, by order of the Lord Chancellor, from time to time be applied, the following procedure shall be adopted.

For the procedure under this rule, see the Annual Practice, 1906, p. 80.

Ord. XII. r. 2. Appearance.

By Ord. XII. r. 2, "Appearances entered in London shall be entered in the Central Office."

R. 3. Central Office. Probate and Admiralty.

By Rule 3, "In Probate and Admiralty actions notice of appearances entered shall forthwith be given by the Central Office to the Probate and Admiralty Registries respectively."

In probate actions, the same solicitor cannot appear for both

(*e*) *Beddington* v. *Beddington* (1876), L. R. 1 P. D. 426; 45 L. J. P. 44; 34 L. T. 366.

sides, except by leave of the judge or registrar. If a party is cited to appear, the citation must be produced when the appearance is entered.

R. 8. Mode of entering appearance. Memorandum and duplicate.

By Rule 8, "A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal."

R. 9. Notice of appearance.

By Rule 9, "A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (Form No. 2, in Appendix A., Part II.) (*f*) to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service (which, in the case of a writ issued out of a district registry, must be the address for service within the district), or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum."

R. 10. Defendant's address for service.

By Rule 10, "The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the Central Office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, and if the appearance is entered in a district registry, a

(*f*) See *post*, Appendix, p. 878.

place, to be called his address for service, which shall be within the district, and where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor."

By Rule 11, "A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the Central Office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district." R. 11. Defendant in person.

By Rule 12, "If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a judge, on the application of the plaintiff." R. 12. Memorandum irregular; address fictitious.

By Rule 13, "The memorandum of appearance shall be in the Form No. 1, in Appendix A., Part II., with such variations as circumstances may require" (*g*). R. 13. Memorandum of appearance.

By Rule 14, "Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book." R. 14. Officer to enter memorandum.

By Rule 17, "If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum." R. 17. Defendants appearing by same solicitor.

By Rule 18, "A solicitor not entering an appearance . . . . . in pursuance of his written undertaking so to do, shall be liable to an attachment." R. 18. Solicitor not entering appearance.

By Rule 22, "A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall not, unless the Court or a judge shall otherwise order, be entitled to any R. 22. Time for appearance.

(*g*) See *post*, Appendix.

further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ."

R. 23. Probate intervention.

By Rule 23, "In probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased."

Probate Rules, C. B. r. 6.

The Probate Court Rules (Contentious Business, r. 6) require the order of a judge or registrar for this purpose.

Application is made by summons before the registrar. If a party is cognizant of the proceedings and fails to intervene he will be bound by the result of the proceedings. (*Wytcherley* v. *Andrews* (1871), 2 P. & D. 328; 40 L. J. P. 57; see also Citations, *ante*, p. 371.)

Ord. XIII. r. 1. Default of appearance by infant or person of unsound mind.

Notice of application.

By Ord. XIII. r. 1, "Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service."

Guardian to infant

Where the defendant was a minor resident out of the

jurisdiction, and notice of the writ had been served upon her, and upon her guardian nominated by the foreign Court, but no appearance had been entered on her behalf, and it appeared that her guardian declined to enter an appearance, the Court, holding that the practice was governed by the above Rule 1 of Ord. XIII., and not by Rule 74 of the Contentious Rules of the Probate Court, 1862, nominated the official solicitor of the Court to be the defendant's guardian *ad litem*, and ordered that his costs should be part of the costs of the plaintiff, who was the executor propounding the will. (*White* v. *Duvernay*, (1891) P. 290.)

declining to enter appearance. Guardian to minor refusing to enter.

By Rule 12, "In all actions not by the rules of this order otherwise provided for"—among which are probate actions—"in case the party served with the writ . . . . does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service . . . . the action may proceed as if such party had appeared."

R. 12. Where party does not appear action may proceed.

Order XVI. r. 16. "Infants may sue as plaintiffs by their next friends, in the manner heretofore practised in the Chancery Division, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by the Married Women's Property Act, 1882."

Ord. XVI. r. 16. Married women and infants.

Guardians ad litem.—When it is desired to institute proceedings or enter an appearance on behalf of minors or infants, the practice is governed by Probate Rule 74, C. B., not by R. S. C., Ord. XVI. r. 18. See also Probate Rules, N. C. 34 and 35.

Guardians *ad litem*.

R. S. C., Ord. XIII. r. 1, is held to be applicable in probate actions in case of default of appearance of minor or infant defendants. (See *White* v. *Duvernay*, (1891) P. 290; 60 L. J. P. 89.)

Married Women as Guardians.—Barnes, J. (following *Re Duke of Somerset*, 34 C. D. 465), held that a married woman cannot act as guardian *ad litem* in a probate action.

(*Markham* v. *Markham*, May, 1904; R. S. C., Ord. XVI. r. 16, n.)

Minors elect their own guardians, who should be the next of kin, unless they renounce or have an adverse interest. The election and the consent of the guardian are filed in the registry, together with an affidavit as to fitness of the guardian and stating that he has no adverse interest.

The affidavit is marked by the registrar. Guardians are assigned to infants by order of the registrar on an affidavit as to fitness and no adverse interest.

Where there is no father living the mother or her appointee is the guardian. (See Guardianship of Infants Act, 1886.)

In the case of a mother being the guardian no election or assignment is necessary, but an affidavit of no adverse interest is required.

If the appearance is to a writ of summons the fiat of the registrar must be obtained before it can be entered at the Central Office.

R. 17. Lunatics and persons of unsound mind.

Rule 17. Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the principal Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the Chancery Division, and may in like manner defend any action by their committees or guardians appointed for that purpose.

CHAPTER XI.

PLEADINGS GENERALLY.

The practice as regards pleadings has been materially altered by the summons for directions. In this chapter the general rules on pleadings are given. In the next chapter the practice under a summons for directions is dealt with.

Forms of writs, statement of claim, defence and counterclaim are given in the Appendix, pp. 872, 896, 898.

Ord. XIX. r. 1. Rules of pleading.

By Ord. XIX. r. 1, "The following rules of pleading shall be used in the High Court of Justice."

R. 2. Delivery of pleadings.

By Rule 2, "The plaintiff shall, subject to the provisions of Ord. XX., and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall, subject to the provisions of Ord. XXI., and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counterclaim (if any), and the plaintiff shall, subject to the provisions of Ord. XXIII., and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counterclaim. Such statements shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same."

Costs of prolix pleadings.

R. 3. Set-off and counterclaim.

By Rule 3, "A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a judge may, on the application of the plaintiff before trial, if in the opinion of the Court or judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof."

R. 4. Pleading to state material facts and not evidence.

By Rule 4, "Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel or a special pleader they shall be signed by him; and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person."

R. 5. Forms of pleading.

By Rule 5, "The forms in Appendices C., D. and E., when applicable, and where they are not applicable forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be."

R. 6. Particulars to be given in certain cases.

By Rule 6, "In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are

exemplified in the forms aforesaid, particulars (with dates and items, if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading."

R. 7. Further and better statement, or particulars.

By Rule 7, "A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just."

R. 8. Summons for particulars to operate as stay—save, &c.

By Rule 8, "The party at whose instance particulars have been delivered under a judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time."

R. 9. Printing and writing pleadings.

By Rule 9, "Every pleading which shall contain less than ten folios (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed."

R. 10. Delivery of pleadings.

By Rule 10, "Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor; but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer."

Probate Rules, C. B. r. 110.

By Rule 110, Probate Rules (Contentious Business), "It shall be sufficient to leave all notices and copies of pleadings and other instruments which, by the rules and orders of the Court, are required to be given or delivered

to the opposite parties in a cause, or to their . . . solicitors . . . and personal service of which is not expressly required, at the address furnished by such parties respectively."

Ord. XIX. r. 11. Marking pleadings.

By Ord. XIX. r. 11, "Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the division to which the judge (if any) to whom the action is assigned belongs, the title of the action, and the description of the pleading, and shall be indorsed with the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor."

R. 13. Specific denial.

By Rule 13, "Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition."

R. 15. Pleadings to raise all grounds of defence or reply.

By Rule 15, "The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds."

R. 16. Departure.

By Rule 16, "No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same."

R. 17. Denial to be specific.

By Rule 17, "It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact, of which he does not admit the truth, except damages."

R. 18. Joinder of issue.

By Rule 18, "Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted."

R. 19. Negative pregnant.

By Rule 19, "When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances."

R. 21. Effect of documents to be stated.

By Rule 21, "Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material."

R. 22. Malice, knowledge, &c.

By Rule 22, "Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred."

R. 23. Notice.

By Rule 23, "Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material."

R. 25. Presumptions of law.

By Rule 25, "Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied. . . ."

R. 26. Technical objection.

By Rule 26, "No technical objection shall be raised to any pleading on the ground of any alleged want of form."

R. 27. Striking out pleadings.

By Rule 27, "The Court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between solicitor and client."

Examples of.

Where pleadings contain irrelevant matter, application should be made at chambers to have it struck out (*a*).

Where the executors of a will having called in probate of an earlier will, in their declaration propounded the later will, and alleged that the defendant had surreptitiously obtained probate of the earlier will, knowing of the existence of the later, and that such probate ought to be revoked, and the will pronounced invalid, the Court ordered the part of the declaration relating to the earlier will to be struck out (*b*).

Where plaintiff propounded a will dated the 3rd of March, 1862, the defendant pleaded *inter alia* (1) that, subsequently to the alleged execution of the said will, the testator duly executed a will on the 29th of March, 1864;

(*a*) *Farlar* v. *Farlar* (1858), 1 S. & T. 124; 27 L. J. P. 103.

(*b*) *Rosbotham* v. *Rosbotham* (1861), 2 S. & T. 121; 30 L. J. P. 38; 3 L. T. 557.

(2) that the will propounded, howsoever executed, was duly revoked by and by virtue of the will of the 29th of March, 1864, and (3) that the will of the 29th of March, 1864, was, subsequently to its execution, destroyed by the deceased with the intention of revoking the same:—The Court held, that the 1st and 3rd pleas were bad, as neither showed that the will propounded was not entitled to probate, and that the words "*howsoever executed*," in the 2nd plea, must be struck out, as, for the purposes of the plea, it must be assumed that the will propounded was duly executed (*c*).

Where a plaintiff propounded a will of September, 1880, and the defendant counterclaimed to prove a will of May, 1881, and the plaintiff replied (*inter alia*) that testator was not of sound mind when will of May, 1881, was executed, and fifthly, that, if it was duly executed, it was duly revoked by a will of June, 1881, executed when testator was in a similar state of mind:—Held, that the fifth clause ought not to be struck out as embarrassing (*d*).

Proceedings in lieu of Demurrer.

Ord. XXV. r. 1. R. 2. Demurrer abolished. Points of law may be raised by pleadings.

By Ord. XXV. r. 1, "No demurrer shall be allowed."

By Rule 2, "Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial; provided that, by consent of the parties, or by order of the Court or a judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial."

R. 3. Dismissal of action.

By Rule 3, "If, in the opinion of the Court or a judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim, or reply therein, the

(*c*) *Powell* v. *Powell* (1866), L. R. 1 P. & D. 6; 35 L. J. P. 5; 13 L. T. 566.

(*d*) *Rigg* v. *Hughes* (1884), 9 P. D. 68; 53 L. J. P. D. 62; 50 L. T. 293; 32 W. R. 355.

Court or judge may thereupon dismiss the action or make such other order therein as may be just."

R. 4. Striking out pleading where no reasonable cause of action disclosed.

By Rule 4, "The Court or a judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

Inherent jurisdiction to restrain frivolous and vexatious proceedings.

The Probate Division has, apart from Ord. XXV. r. 3, an inherent jurisdiction, in common with other Courts, to stay proceedings which are frivolous and vexatious and an abuse of the process of the Court.

Therefore, where an action was brought to obtain revocation of letters of administration granted in 1798, the plaintiff claiming to represent the next of kin of the intestate, and the defendants being the representatives of the deceased administrator, the Court, having regard to the lapse of time and the fact that defendants did not and could not succeed to the administration sought to be revoked, and the other circumstances of the case, held that the action was frivolous and vexatious, and must be dismissed (*e*).

Ord. XXVII. r. 1. Default of plaintiff in delivering statement of claim.

By Ord. XXVII. r. 1, "If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the Court or judge shall think just."

(*e*) *Willis* v. *Earl Beauchamp* (1886), 11 P. D. 59; 55 L. J. P. 17; 54 L. T. 185.

By Rule 10, "In probate actions, if any defendant make default in filing and delivering a defence, the action may proceed, notwithstanding such default." R. 10. Probate action.

By Rule 13, "If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue." R. 13. Close of pleadings on default.

By Ord. XXVIII. r. 1, "The Court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties." Ord. XXVIII. r. 1. Amendment of indorsement.

By Rule 2, "The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared." R. 2. Plaintiff may amend without leave, when.

By Rule 3, "A defendant who has set up any counterclaim or set-off may, without any leave, amend such counterclaim or set-off at any time before the expiration of the time allowed him for answering the reply, and before such answer, or in case there be no reply, then at any time before the expiration of twenty-eight days from defence." R. 3. Defendant with counterclaim or set-off may amend without leave, when.

By Rule 4, "Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a judge to disallow the amendment, or any part thereof, and the Court or judge may, if satisfied that the justice of the case R. 4. Disallowance of amendment, application for, within eight days.

requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just."

R. 5. Where one party has amended under Rule 2 or 3.

By Rule 5, "Where any party has amended his pleading under Rule 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead, or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment."

R. 6. Amendment by leave.

By Rule 6, "In all cases not provided for by the preceding rules of this Order, application for leave to amend may be made by either party to the Court or a judge, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just."

R. 7. The order to amend. Time for.

By Rule 7, "If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a judge."

R. 8. Amendments to be printed, when.

By Rule 8, "An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith, if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the document as amended."

R. 9. Date of order and date of

By Rule 9, "Whenever any indorsement or pleading is amended, the same when amended shall be marked

with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made in manner following, viz.: 'Amended day of , pursuant to order of dated the of .'" amendment to be marked.

By Rule 10, "Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same." R. 10. Delivery to opposite party.

By Rule 11, "Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a judge on motion or summons without an appeal." R. 11. Clerical mistakes and accidental omissions.

By Rule 12, "The Court or a judge may at any time, and on such terms as to costs or otherwise as the Court or judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings." R. 12. General power to amend.

By Rule 13, "The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the Court or a judge shall otherwise order." R. 13. Costs.

A plaintiff who had wrongly described himself was allowed to amend that description on payment of defendant's costs up to time of amendment, exclusive of the costs of entering an appearance (*f*). Amendment of pleadings, when allowed. Examples of.

Defendants, who disputed the validity of two codicils only, were allowed to amend within a week, by adding pleas against the will, but were ordered to bring a legacy received by one of them into Court, and pay costs of motion (*g*).

(*f*) *Ridgway* v. *Abingdon* (1863), 3 S. & T. 3; 32 L. J. P. 107.

(*g*) *Ware* v. *Claxton*, 1 S. & T. 251.

Where it is proposed to add a plea after issue joined, the Court must be satisfied on affidavit of the necessity of such plea (*h*).

The inclination of the Court is to allow the record to be amended at the trial by the addition of a new plea, rather than to shut out any defence which might be raised.

(*h*) *Twells* v. *Clarke* (1864), 3 S. & T. 280; 33 L. J. P. 49; 9 L. T. 658.

CHAPTER XII.

SUMMONS FOR DIRECTIONS—AFFIDAVIT OF SCRIPTS—PLEADINGS—DISCOVERY AND INSPECTION—INTERROGATORIES — COMMISSIONS — EXAMINATION OF WITNESSES — PLACE AND MODE OF TRIAL — LIBERTY TO APPLY.

Summons for Directions (Ord. XXX.).

Summons for directions.

Rule 1.—"(a) Except in the cases mentioned in paragraph (d), the plaintiff in every action shall take out a summons for directions returnable in not less than four days.

"(b) Such summons shall be taken out after appearance and before the plaintiff takes any fresh step in the action other than application for an injunction, or for a receiver, or the entering of judgment in default of defence under Ord. XXVII.

"(c) Where under Ord. XIV. the plaintiff applies for judgment, or where under Ord. XVIIIA. the defendant applies for a statement of claim, the judge may deal with such application as if the plaintiff had been entitled to take out and had taken out a summons for directions."

Note.—Paragraph (d) does not apply to Probate Division.

The plaintiff must issue his summons for directions within fourteen days from the entry of the defendant's appearance.

Interlocutory proceedings.

Rule 2. "Upon the hearing of the summons the Court or a judge shall, so far as practicable, make such order as may be just with respect to all the proceedings to be taken

in the action, and as to the costs thereof, and more particularly with respect to the following matters: Pleading, particulars, admissions, discovery, interrogatories, inspection of documents, inspection of real or personal property, commissions, examination of witnesses, place and mode of trial. Such order shall be in the Form No. 4A, Appendix K., with such variations as circumstances may require" (p. 924).

No affidavit to be used.

Rule 3. "No affidavit shall be used on the hearing of the said summons except by special order of the Court or a judge."

Parties to apply for directions.

Rule 4. "On the hearing of the summons any party to whom the summons is addressed shall, so far as practicable, apply for any order or directions as to any interlocutory matter or thing in the action which he may desire."

Subsequent applications.

Rule 5. "Any application subsequently to the original summons *and before judgment* for any directions as to any interlocutory matter or thing by any party shall be made under the summons by two clear days' notice to the other party stating the grounds of the application."

Costs of subsequent applications.

Rule 6. "Any application by any party which might have been made at the hearing of the original summons shall, if granted on any subsequent application, be granted at the costs of the party applying unless the Court or a judge shall be of opinion that the application could not properly have been made at the hearing of the original summons."

Default in applying for directions.

Rule 8. "In any action to which Rule 1 of this Order applies, if the plaintiff does not within fourteen days from the entry of the defendant's appearance take out a summons for directions under this Order, the defendant shall be at liberty to apply for an order to dismiss the action, and upon such application the judge may either dismiss the action on such terms as may be just, or may deal with such application in all respects as if it were a summons for directions under this Order."

Form of Summons.

190 , , No.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(PROBATE.)

In the Estate of , deceased.

Between *Plaintiff*

against

Defendant.

Let all parties concerned attend one of the registrars, at the principal probate registry of the High Court of Justice, at Somerset House, Strand, in the county of Middlesex, on day, the day of , 190 , at o'clock in the noon, on the hearing of an application on the part of the to show cause why an order for directions should not be made in this action as follows:—

Affidavit of Scripts.

Pleadings.

Endorsement on writ to stand for statement of claim.

Statement of claim containing full particulars in days.

Statement of defence containing full particulars in days.

Reply (if necessary) in days.

Admissions.

Discovery. That after defence delivered the plaintiff and defendant do respectively within ten days after service of copy receipt for deposit in Court file an affidavit of documents.

Interrogatories. For leave to interrogate the

Answers to be filed within ten days.

Inspection of Documents.

Inspection of real or personal property.

Commissions.

Examination of Witnesses.

Place of trial.

Mode of trial.

Any other interlocutory matter or thing.

Liberty to apply

And that the costs of this application be costs in the cause.

Dated the day of , 190 .

This summons was taken out by , of , solicitor for .

To .

Affidavit of Scripts.

Affidavit of scripts.

The usual time ordered for filing the affidavit of scripts is eight to ten days.

R. 31, C. B.

By Rule 31, Contentious Business, "Every script which has at any time been made by or under the direction of the testator, whether a will, codicil, draft of a will or codicil, or written instructions for the same, of which the deponent has any knowledge, is to be specified in his affidavit of scripts; and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith, in the registry."

R. 32, C. B.

By Rule 32, Contentious Business, "No party to the cause, nor his . . . . solicitor . . . . shall be at liberty, except by leave of the judge, or of one of the registrars of the principal registry, to inspect the affidavit as to scripts, or the scripts annexed thereto, filed by any other party to the cause, until his own affidavit as to scripts shall have been filed."

The form of affidavit now in use will be found in the Appendix (p. 953).

Scripts, what are.

"A will, codicil, draft of will or codicil, or written instructions for the same," is a script. If the will, &c. be destroyed, a copy, or any paper embodying the contents, becomes a script, even though not made by or under the direction of the testator.

Every script in the possession of the deponent should be annexed, and should be marked with an alphabetical letter as an exhibit; if not within the possession of the deponent, they should be described, and, if possible, the place where they are, as "now remaining in the principal registry of the Court," or the like.

By Rule 75, Contentious Business, "When any pencil writing appears on a will, script, or other document filed in the registry, a fac-simile copy of the will, script, or other document, or of the pages or sheets thereof, containing the pencil writing, must also be filed with those portions written in red ink which appear in pencil in the original. Such copy must be examined by an examiner in the registry." Pencil writing on will, &c.

The fee for filing is 2*s*. 6*d*. for the affidavit and 5*s*. for the scripts, up to the number of five, and 5*s*. in addition for any number of scripts exceeding five. Fees on filing.

Pleadings.

Indorsement on writ to stand for statement of claim.

By Ord. III. r. 5, "In probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character."

Statement of Claim containing full Particulars.

By Rule 4, "Whenever a statement of claim is delivered, the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ." Ord. XX. r. 4. Claim beyond indorsement.

By Rule 6, "Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a judge may think just, to the R. 6. Relief to be specifically stated.

same extent as if it had been asked for. And the same rule shall apply to any counterclaim made, or relief claimed, by the defendant, in his defence."

R. 7. Relief founded on separate facts.

By Rule 7, "Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counterclaim founded upon separate and distinct facts."

A claim to pronounce against the validity of the will of a married woman who had obtained a protection order, and a counterclaim to discharge the protection order, may be included in the same action (*a*).

R. 9. Interest actions in Probate Division.

By Rule 9, "In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest."

Meaning of term.

"Interest causes," which are now included under the general term "probate actions," are suits where the legal interest of a person in the estate of the deceased is denied. Such a suit may arise either as a collateral question in a testamentary cause, in which case it may be tried apart from the main question at issue between the parties, or as an original suit, where the right to administration of the effects of an intestate is disputed.

For instance, where a party applying for a grant is stopped by a caveat, the caveator is warned; he enters an appearance setting forth his interest; the party applying for the grant then commences an action in the usual way by writ of summons. If the defendant appears to the writ, the plaintiff delivers his statement of claim denying the interest of the defendant, and the pleadings continue, and the action proceeds in the usual way. It is

(*a*) *Mudge* v. *Adams* (1881), 6 P. D. 54; 50 L. J. P. 49; 44 L. T. 185. See also *Mahoney* v. *McCarthy*, (1892) P. 21; 61 L. J. P. 41.

obvious that such an action may arise equally in testamentary causes as in cases of intestacy.

By Rule 37, Probate Rules (Contentious Business), "In a testamentary cause after delivery of the declaration (*now called statement of claim*), the interest of the party to whom it has been delivered cannot be disputed by the party declaring except by leave of the judge." Probate Rules, C. B. r. 37. Interest of party cannot be disputed after delivery of statement of claim.

Where defendants entered a caveat in the goods of J. S., and afterwards, upon this caveat being warned by the plaintiff, entered an appearance claiming as universal legatees of J. S.; plaintiff then filed a declaration alleging that J. S. died intestate, leaving the plaintiff his lawful widow. The defendants in their plea propounded a will of J. S., appointing A. B. sole executrix and universal legatee: upon motion by the plaintiff for an order that the defendants should amend their plea, by setting forth in it such matter as would entitle them to administration, with the will of J. S. annexed:—Held, that by filing the declaration without objecting to the appearance, the plaintiff had admitted the defendants' title to set up the will (*b*).

By Rule 61 (Probate Rules, Contentious Business), "In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the judge, adduce proof on one and the same trial of their interests respectively." Probate Rules, C. B. r. 61.

By Rule 62 (Probate Rules, Contentious Business), "In interest causes the pleading of each party must show on the face of it that no other person exists having a prior interest to that of the claimant." R. 62, C. B.

In a suit for administration, instituted on behalf of the Crown by the King's Proctor, who alleges that the deceased died a bastard, &c., a defendant, who claims to Suit by Queen's Proctor, claiming that deceased died a bastard.

(*b*) *Inkson* v. *Jeeves* (1863), 3 S. & T. 39; 32 L. J. P. 69; 8 L. T. 173.

be next of kin of the deceased, must in his plea set out his pedigree, but in doing so, particulars as to the time and place of a marriage and the date of a birth need not be alleged. The defendant, in setting out his pedigree, alleged, *inter alia*, that the deceased was the legitimate daughter of Francis Godman Capell by his lawful wife: on motion for an order that the plea should be amended by setting out when, where, and to whom, F. G. C. was married, and the date of the deceased's birth:—Held, that the plea was sufficient (*c*).

Striking out defence.

In an interest suit, where the real question in dispute was the legitimacy of the plaintiff, on motion to strike out the defence, the Court held that the question was too serious a matter to be decided on motion (*d*).

Statement of Defence containing full Particulars.

Ord. XXI. r. 9. Costs of improper denial or non-admission of facts.

By Rule 9, "Where the Court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted."

R. 10. Set-off and counter-claim.

By Rule 10, "Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he shall, in his statement of defence, state specifically that he does so by way of counterclaim."

R. 11. Title of counterclaim.

By Rule 11, "Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counterclaim were to be enforced by cross-action, would be defendants

(*c*) *Queen's Proc.* v. *Wallis* (1862), 31 L. J. P. 97. See also *Queen's Proc.* v. *Williams*, 2 S. & T. 353; 31 L. J. P. 9; *Griffith* v. *Greenwood*, 19 L. T. 661.

(*d*) *Harrington, In goods of*, 63 L. T. 228.

to such cross-action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff."

R. 12. Claim against person not party.

By Rule 12, "Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2 in Appendix B. or to the like effect."

Notice in probate actions.

Rule 18. "In probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side, unless the judge shall be of opinion that there was no reasonable ground for opposing the will."

Formerly, when the party opposing a will gave notice that he merely insisted on the will being proved in solemn form and only intended to cross-examine the witnesses, the Court had no jurisdiction to condemn him in costs. (*Leigh* v. *Green*, (1892) P. 17; 61 L. J, P. 66; *Tappenden* v. *Lucas*, 65 L. T. 684; *Peyton* v. *Peyton*, 27 Ir. L. T. 10.) The concluding clause was therefore added to this rule by R. S. C. of August, 1898. And now a defendant giving such a notice, whether he asks for a jury or not, is not liable to pay the costs of the plaintiff, unless the judge is of opinion that there was no reasonable ground for opposing (*Davies* v. *Jones*, (1899) P. 161; 68 L. J. P. 69); and "it does not at all follow that, because a defendant fails, there was no reasonable ground" (*Ibid.* p. 164). In *Spicer* v. *Spicer*, (1899) P. 38; 68 L. J. P. 69, the judge held that the defendants had opposed the will without reasonable ground; and ordered them to pay the costs of the plaintiffs. (And see *Perry* v. *Dixon*, 80 L. T. 297.)

This rule must be construed according to the principles which guided the old Ecclesiastical Courts, and afterwards the Probate Court. Hence a party who seeks to call in and obtain revocation

of probate (as distinct from a party who enters a caveat and takes the ordinary steps to oppose the proof of a will) is not within this rule; and a notice given hereunder by such a party is bad. (*Tomalin* v. *Smart*, (1904) P. 141; 73 L. J. P. 37; 90 L. T. 171. See Annual Practice, 1906, p. 269.)

Plea in abatement.

By Rule 20, "No plea or defence shall be pleaded in abatement."

Substance of defence in probate actions.

By Ord. XIX. r. 25A, "In probate actions it shall be stated with regard to every defence which is pleaded what is the substance of the case on which it is intended to rely: and further, where it is pleaded that the testator was not of sound mind, memory, and understanding, particulars of any specific instances of delusion shall be delivered *before the case is set down for trial*, and, except by leave of the Court or a judge, no evidence shall be given of any other instances at the trial."

R. S. C. (July, 1901), r. 1, as amended by R. S. C. (October, 1904), r. 1. Till 1901 the practice of the Probate Court and of the Probate Division had always been *not* to order particulars of incapacity. See the decision of Sir J. Hannen, P., in *Hankinson* v. *Barningham* (1884), 9 P. D. 62; 53 L. J. P. 16, approved by Lord Esher, M.R., in *Cave* v. *Torre*, 54 L. T. 519. If the grant of probate be opposed on the ground of undue influence, particulars will be ordered of the name of the person who is said to have exercised it, but not of the acts which are relied on as amounting to undue influence. (*Salisbury* v. *Nugent* (1884), 9 P. D. 23; 53 L. J. P. 23. See Annual Practice, 1906, p. 251.)

Reply, if necessary.

Ord. XXIII. r. 1. "No reply shall be delivered unless the same be ordered."

If leave to deliver a reply is not given at the hearing of the summons for directions, it must be obtained by a subsequent application.

Admissions.

Ord. XXXII. r. 1. Notice of admission of facts.

Rule 1. "Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party."

Directions as to admissions are included in the order made on a general summons for directions.

Rule 2. "Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the Court or a judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense." Notice to admit documents. Costs of refusal or neglect to admit.

Rule 4. "Any party may, by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court or a judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a judge certify that the refusal to admit was reasonable, or unless the Court or a judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: provided also, that the Court or a judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just." Notice to admit facts. Costs of refusal or neglect to admit.

Rule 5. "A notice to admit facts shall be in the Form No. 12 in Appendix B., and admissions of facts shall be Form of notice of admissions.

in the Form No. 13 in Appendix B., with such variations as circumstances may require" (pp. 888, 889).

Affidavit of signature to admissions.

Rule 7. "An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required."

Notice to produce documents.

Rule 8. "Notice to produce documents shall be in the Form No. 14 in Appendix B., with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served" (see p. 890).

Costs of notice where documents unnecessary.

Rule 9. "If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice."

Discovery and Inspection of Documents.

Application for discovery of documents.

Ord. XXXI. r. 12. "Any party may, without filing any affidavit, apply to the Court or a judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court or judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his discretion, be thought fit. *Provided that discovery shall not be ordered when and so far as the Court or judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.*"

R. 13. Affidavit of documents.

By Rule 13, "The affidavit to be made by a party against whom such order as is mentioned in the last pre-

ceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the Form No. 8 (*e*) in Appendix B., with such variations as circumstances may require."

R. 14. Production of documents.

By Rule 14, "It shall be lawful for the Court or a judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court or judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just."

R. 15. Inspection of documents referred to in pleadings or affidavits.

By Rule 15, "Every party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or judge shall deem sufficient for not complying with such notice, in which case the Court or judge may allow the same to be put in evidence, on such terms as to costs and otherwise, as the Court or judge shall think fit."

R. 16. Notice to produce.

By Rule 16, "Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 9 (*f*) in Appendix B., with such variations as circumstances may require."

R. 17. Time for in-

By Rule 17, "The party to whom such notice is given shall, within two days from the receipt of such notice, if

(*e*) See this form in the Appendix, p. 886. (*f*) *Ibid.* p. 887.

spection when notice given under Rule 13.

all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the Form No. 10 in Appendix B. (*g*), with such variations as circumstances may require."

Bank and trade books.

R. 18. Order for inspection.

Rule 18.—"(1.) If the party served with notice under Rule 17 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the *Court or* judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit: *Provided that the order shall not be made when and so far as the Court or a judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.*

"(2.) Any application to inspect documents, except such as are referred to in the pleadings, *particulars*, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. *The Court or judge shall not make such order for inspection of such documents when and so far as the Court*

(*g*) See this form in the Appendix, p. 887.

or judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs."

By Rule 20, "If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection." R. 20. Premature discovery.

By Rule 21, "If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a judge for an order to that effect, and an order may be made accordingly." R. 21. Non-compliance with order for discovery.

But where the party is shown not to be in a condition to make an affidavit, the Court will not attach him. On receiving notice of motion for attachment against him, the party must, if he wishes to prevent the motion being brought on, not only file his affidavit or give discovery, but he must tender a fixed sum for costs or offer to pay the taxed costs. (*Thomas* v. *Palin*, 21 C. D. 363.)

By Rule 22, "Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order." R. 22. Service on solicitor of order for discovery.

R. 23. Attachment of solicitor.

By Rule 23, "A solicitor upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment."

R. 24. Using answers to interrogatories at trial.

By Rule 24, "Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in."

R. 25. Security for costs of discovery to be given.

By Rule 25, "In every cause or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the Court or a judge, be secured in the first instance, as provided by Rule 26 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery shall appear to the judge at the trial, or, if there is no trial, to the Court or a judge, or shall appear to the taxing officer, to have been reasonably asked for."

R. 26. Mode of giving security for costs of discovery.

Rule 26. "Any party seeking discovery by interrogatories or otherwise may be ordered, upon making application for discovery, to pay into Court to a separate account in the action, to be called 'Security for Costs Account,' to abide further order, the sum of 5*l.*, or any less sum, and may be ordered further to pay into Court such additional sum as the Court or a judge shall direct. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the said payment into Court, and the time for answering or making discovery shall in all cases commence from the date of such service. The party from whom discovery is

sought shall not be required to answer or make discovery unless and until the said payment has been made."

This rule differs from the old, as it gives a discretion as regards ordering security, and it is not now the practice to order security except under special circumstances.

R. 27. Final disposition of money standing to "Security for Costs Account." Discovery and inspection.

By Rule 27, "Unless the Court or a judge shall at or before the trial otherwise order, the amount standing to the credit of the 'Security for Costs Account' in any cause or matter shall, after the cause or matter has been finally disposed of, be paid out to the party by whom the same was paid in on his request, or to his solicitor on such party's written authority, in the event of the costs of the cause or matter being adjudged to him, but, in the event of the Court or judge ordering him to pay the costs of the cause or matter, the amount in Court shall be subject to a lien for the costs ordered to be paid to any other party."

R. 27A. Certificate for payment out of money lodged to "Security for Costs Account."

By Rule 27A, "If after a cause or matter has been finally disposed of, by consent or otherwise, no taxation of costs shall be required, the taxing officer, master, or chief clerk (as the case may be) may, either by consent of the parties, or on being satisfied that any party who has lodged any money to the 'Security for Costs Account' in such cause or matter has become entitled to have the same paid out to him, give a certificate to that effect, which certificate shall be acted on and have effect in all respects as if the same had been an order made in the said cause or matter."

Order to apply to infants.

Rule 29. "This order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem*."

R. S. C., Nov. 1893, r. 16. Prior to this rule no discovery could be had from them. No provision is made for the case of lunatics and persons of unsound mind.

Inspection of documents in hands of solicitor.

The defendants in an action by the plaintiff propounding a will having applied for inspection of documents, it

appeared that the solicitor for the plaintiff, had for many years acted as solicitor for the testatrix, whose will was in dispute, and had in his possession diaries, extracts from diaries, cash ledgers, bankers' cash books, containing entries and memoranda relating to the deceased and her affairs, which documents were the private property of the solicitor.

Held, affirming Jeune, J., that an order could not be made on the plaintiff to produce them for inspection.

Also, affirming Jeune, J., that the solicitor could not be compelled, under Ord. XXXVII. r. 7, to produce these documents for the purpose of discovery, nor be called for examination at this stage of the proceedings under Ord. XXXVII. r. 5.

Held, reversing Jeune, J., that an affidavit by which a party objected to produce documents because she claimed them "to be privileged, as communications between herself and her solicitor," was insufficient to protect them, it being necessary to show that the letters were professional communications of a confidential character (*h*).

Letters to solicitor and counsel.

In a suit for revocation of probate on the ground of testator having been of unsound mind, and that the will was obtained by undue influence of the defendants, two of whom were executors and the third universal legatee; four anonymous letters having been received after the action began, relating to matters in dispute, two by the plaintiff, one by her solicitor, and the other by her counsel: the Court held that the letters to the plaintiff must be produced, but that the letters to the solicitor and counsel were privileged, for they must be taken to have been sent to them for the purposes of the action by reason of their being the plaintiff's legal advisers in the action (*i*).

C. P. Act, 1857 (20 & 21 Vict. c. 77),

By the 24th section of the Court of Probate Act, 1857, "The Court of Probate may require the attendance of any

(*h*) *O'Shea* v. *Wood*, (1891) P. 286; 60 L. J. P. 82; 65 L. T. 30.

(*i*) *Young* v. *Holloway* (1887), 12 P. D. 167; 56 L. J. P. 81; 57 L. T. 515.

party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after, or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and the Court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings in the same form, or as nearly as may be, as that in which a writ of *subpœna ad testificandum* or of *subpœna duces tecum* is now issued by any of her Majesty's Superior Courts of Law at Westminster; and every person disobeying such writ shall be considered as in contempt of the Court and also be liable to forfeit a sum not exceeding one hundred pounds."

s. 24, ordering attendance of witnesses at any time for examination in open Court.

Interrogatories.

Ord. XXXI. r. 1. "In any cause or matter the plaintiff or defendant by leave of a Court or judge may deliver interrogatories in writing for the examination of the opposite parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness."

Interrogatories.

In *Young* v. *Holloway* (*k*), interrogatories for the examination of the defendants, asking them what sums they had

Interrogatories as to sums of money

(*k*) (1887), 12 P. D. 167; 56 L. J. P. 81; 57 L. T. 515.

received from testator.

received from the testator by way of payment for services, loan, or gift, and whether the universal legatee had since the death of the testator made over any and what part of the property to the other defendants, were ordered to be answered, limiting the answers as to moneys received to any sums paid during the years 1880 to 1883 inclusive.

Particular interrogatories to be submitted.

Rule 2. "*On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court or judge.* In deciding upon such application, the Court or judge shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matter in question, or any of them, *and leave shall be given as to such only of the interrogatories submitted as the Court or judge shall consider necessary either for disposing fairly of the cause or matter or for saving costs.*"

A copy of the proposed interrogatories should be served with the summons.

R. 3. Costs of interrogatories.

By Rule 3, "In adjusting the costs of the cause or matter, inquiry shall, at the instance of any party, be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court or judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault."

R. 4. Form of.

By Rule 4, "Interrogatories shall be in the Form No. 6 in Appendix B., with such variations as circumstances may require" (*l*).

R. 6. Objections to interrogatories by answer.

By Rule 6, "Any objection to answering any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or

(*l*) See this form in Appendix, p. 886.

on any other ground, may be taken in the affidavit in answer."

By Rule 7, "Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories." R. 7. Setting aside and striking out interrogatories.

By Rule 8, "Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a judge may allow." R. 8. Affidavit in answer, filing.

By Rule 9, "An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios, be printed, and shall be in the Form No. 7 in Appendix B. (*m*), with such variations as circumstances may require." R. 9. Printing affidavit in answer.

By Rule 10, "No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a judge on motion or summons." R. 10. No exception to be taken.

By Rule 11, "If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or answer further, either by affidavit or by *viva voce* examination, as the judge may direct." R. 11. Order to answer or answer further.

Commission and Examination of Witness. (See Probate Rules, C. B. 116—123.)

Application for a commission to issue to take the evidence of a witness abroad must be supported by an affidavit stating that the application is made *bonâ fide*, that the witness can give necessary and material evidence, and that there is good reason why he cannot be examined here.

(*m*) See this form in Appendix, p. 886.

Practice as to.

The practitioner brings into the registry a draft commission, which is settled by the registrar. A fair copy, which is not now required to be written on parchment, together with the draft and a præcipe with a 1*l.* stamp affixed on it, is returned to the registry. The commission is signed by the registrar and sent to the sealer, where it is called for.

Court or judge may order depositions to be taken before a special examiner.

By Ord. XXXVII. r. 5, "The Court or a judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the Court or judge or any officer of the Court, or any other person, and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a judge may direct."

In consequence of this rule it is now very usual, instead of issuing a commission for the registrar to make an order appointing a special examiner, to take the examination of the required witnesses. (Forms of Order, pp. 930, 934.)

Forms of order for a commission, and of writ of commission.

Rule 6. "An order for a commission to examine witnesses shall be in the Form No. 36 in Appendix K.; and the writ of commission shall be in the Form No. 13 in Appendix J., with such variations as circumstances may require" (pp. 930, 918, 973).

Letters of request.

Rule 6A. "If in any case the Court or a judge shall so order, there shall be issued a request to examine witnesses in lieu of a commission. The Forms 1 and 2 in the Appendix hereto shall be used for such order and request respectively, with such variation as circumstances may require, and may be cited as Forms 37A and 37B in Appendix K" (pp. 932, 933).

Practice as to. Annual Practice, p. 482.

The procedure established by this rule is the only means of securing the examination of a German or Spanish subject within their respective countries, the governments of which have severally requested the British Government to apply by letter of request whenever the evidence of German or Spanish subjects is required for use in the British Courts.

The letters of request are prepared by the solicitor, and before any letter of request is sealed the solicitor applying for such letter of request must file a written undertaking in the words and to the effect following:— Annual Practice, Vol. II. p. 767 (1906 ed.).

"TITLE OF CAUSE OR MATTER."

"I (*or* we) hereby undertake to be responsible for all expenses incurred by H.M. Secretary of State for [Foreign Affairs *or* the Colonies, *as the case may be*] in respect of the execution of the letter of request issued herein on the day of , 18 , and on receiving due notification of the amount of such expenses I undertake to pay the same to the senior master."

On issuing a letter of request the solicitor will be required in future to provide a list of all questions to be put to the witness or witnesses, and also a translation thereof in the language of the country to which the letter of request is directed. Such questions or interrogatories will be transmitted to the Foreign Office with the letter of request. This regulation will not apply to a letter of request addressed to the Court of a British colony.

The fee for a letter of request is the same as that for a commission, viz., 1*l.*

The depositions of the witnesses are sent to the probate registry, a minute is drawn up, and they are filed (fee 5*s.* 6*d.*).

Forms of commission and letters of request are given in the Appendix (pp. 932, 933).

PLACE OF TRIAL.

The registrar has the power to order the action to be tried in Middlesex, or at the assizes, or in the county court.

If it is desired to commence proceedings in the county court or transfer them there before issuing a summons for directions, an affidavit (p. 450) must be taken to the registrar to found the jurisdiction of the County Court. A minute will then be drawn up. (Form, p. 974.)

MODE OF TRIAL.

The order is either before the Court itself or by a special or common jury.

LIBERTY TO APPLY.

Notice of application is made for any further directions, *e.g.*, for further and better particulars of statement of claim, or defence and counterclaim; to add parties to the suit; to amend the pleadings, &c.

CHAPTER XIII.

TRIAL—TRIAL AT ASSIZES—NEW TRIAL—MOTION FOR JUDGMENT—PROOF IN SOLEMN FORM—SHORT CAUSES.

Trial.

Ord. XXXIV. r. 1. Special case by consent.

By Ord. XXXIV. r. 1, "The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial."

R. 2. Special case by order before trial.

By Rule 2, "If it appear to the Court or a judge, that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, the Court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed."

By Rule 3, "Every special case shall be printed by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Three printed copies for the use of the judges shall be left therewith." R. 3. Special case to be printed, &c.

By Rule 4, "No special case in any cause or matter to which a married woman (not being a party thereto in respect of her separate property or of any separate right of action by or against her), infant, or person of unsound mind not so found by inquisition is a party, shall be set down for argument without leave of the Court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true." R. 4. Leave to set down where married woman, &c. is a party.

By Rule 5, "Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 25 in Appendix G. (*a*), and also, if any married woman, infant, or person of unsound mind not so found by inquisition be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument." R. 5. Form of entry for argument.

By Rule 6, "The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that, on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal." R. 6. Agreement as to payment of money and costs.

(*a*) See form in Appendix, p. 906.

R. 7. Application of order.

By Rule 7, "This Order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto."

R. 8. Special case under Sir G. Turner's Act.

By Rule 8, "Any special case may hereafter be stated, for the same purposes and in the same manner as was provided by the Act 13 & 14 Vict. c. 35, and the same shall be deemed to be a special case stated in a matter within the meaning of this Order."

It has been thought better to insert this Order as it stands in the Rules of the Supreme Court. At the same time, as in a probate action the questions of law arising therein are usually raised on the pleadings, it is not easy to conceive any set of circumstances under which these provisions for a special case could be utilized in the Probate Division, though at the same time it is impossible to say that such a case might not arise.

The next step to consider is the method of determining the facts in dispute in a probate action.

Ord. XXXVI. r. 4. Causes formerly triable without a jury.

By Ord. XXXVI. r. 4, "The Court or a judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the principal Act could, without any consent of parties, have been tried without a jury."

Heir-at-law, right to jury in probate action. Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 35.

In accordance with the practice of the Probate Court, it is still in the discretion of the judge of the Probate Division to direct questions of fact to be tried with or without a jury, except where the heir-at-law is a party to the action, and insists upon his right to have the issues of fact tried by a jury, under sect. 35 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77).

The mode of trial is settled in the first instance by the registrar on the summons for directions.

Court of Appeal will not interfere with discretion of judge as to mode of trial.

Nor will the Court of Appeal interfere with the discretion of the judge in such cases, unless it is clear that his discretion has been wrongly exercised.

Where an action had been twice tried by a special jury, and in each case the jury had disagreed and been discharged, and the plaintiff had set the case down again for trial before a special jury, the Court, the heir-at-law appearing and not opposing, ordered that the action should be tried by the Court alone. On appeal, it was held that the case was one where, under 20 & 21 Vict. c. 77, s. 35, as the heir-at-law did not ask for a jury, the judge could, before the Judicature Act, without any consent, have ordered the case to be tried without a jury; and therefore, under Ord. XXXVI. r. 4, the judge had jurisdiction to make the order appealed from (*b*).

Case tried twice over by jury—order for trial without jury upheld by Court of Appeal.

By Rule 9, "Every trial of any question or issue of fact with a jury shall be by a single judge, unless such trial be specially ordered to be by two or more judges."

R. 9. Trial to be before single judge.

By Rule 11, "Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial."

R. 11. Notice of trial by plaintiff.

By Rule 12, "If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the Court or a judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or judge may seem just."

R. 12. Notice of trial by defendant: motion to dismiss for want of prosecution.

By Rule 14, "Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise

R. 14. Ten days' notice of trial.

(*b*) *Burgoine* v. *Moordaff* (1883), 8 P. D. 205; 52 L. J. P. 77; 48 L. T. 504.

ordered by the Court or a judge. Short notice of trial shall be four days' notice, unless otherwise ordered."

R. 15. Entry of trial.

By Rule 15, "Notice of trial shall be given before entering the trial: and the trial may be entered notwithstanding that the pleadings are not closed, provided that notice of trial has been given."

R. 16. Avoidance of notice of trial.

By Rule 16, "In London and Middlesex, unless within six days after notice of trial is given, the trial shall be entered by one party or the other, the notice of trial shall be no longer in force."

R. 17. Notice of trial in London or Middlesex.

By Rule 17, "Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the trial may come on in its order upon the list."

R. 18. Notice of trial in the country.

By Rule 18, "Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given."

R. 19. Countermanding notice.

By Rule 19, "No notice of trial shall be countermanded except by consent, or by leave of the Court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just."

R. 20. Entry for trial by party served with notice.

By Rule 20, "If the party giving notice of trial for London or Middlesex omits to enter the trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding rule, within four days enter the trial."

R. 22B. Entry for trial.

By Rule 22B, "After notice of trial has been given of any cause, matter, or issue to be tried elsewhere than in London or Middlesex, either party may, at any time not less than seven days before the commission day appointed for such place, enter the trial at the next assizes in the district registry (if any) (*c*) of the city or town where the

(*c*) This, of course, means the district registry created by the Judicature Acts; *not* the "District Registry" of the Probate Division.

trial is to be had, or with the associate. No later entry shall be allowed, except by leave of a judge going that circuit, or by order of a judge at chambers subject to the consent of a judge going that circuit."

By the Court of Probate Act, 1857, s. 35, it was enacted that "It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this Act to be tried by a special or common jury . . . . . by means of an issue to be directed to any of the superior courts of common law, in the same manner as an issue may now be directed by the Court of Chancery." C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 35. Trial at assizes.

Trial at Assizes.

An order for trial at the assizes is made by the registrar on the summons for directions or by a subsequent notice. The applicant must show sufficient cause for the venue to be changed.

In a testamentary suit touching the validity of a will the jury was discharged without agreeing to a verdict.

A rule absolute for a new trial was granted, but on motion by the plaintiff, at whose instance the first trial was had, the Court refused to change the venue to Stafford assizes (*d*). New trial. Order to remove to assizes refused.

The consent of all parties that an issue in a testamentary matter should go down to the assizes is not sufficient: there must be an affidavit assigning reasons to the satisfaction of the Court (*e*). Consent of parties not alone sufficient.

In order to save expense and delay, the Court will generally allow issues in a testamentary suit to be tried at the assizes. When, however, the suit was for revocation of probate, and there had been great delay in calling in the probate, and the property of the deceased was large, the Court considered those circumstances sufficient grounds Suit for revocation of probate. Leave to try at assizes refused.

(*d*) *Mumford* v. *Shufflebotham*, 21 L. T. 835.

(*e*) *Bull* v. *Bull* (1861), 30 L. J. P. 40.

for refusing an application by the plaintiff, opposed by the defendant, that the issues should be tried at the assizes, but ordered that the defendant, if successful, should not be allowed more costs than he would have been entitled to if the issues had been tried at the assizes (*f*).

Ibid. Lost will.

Where the principal issue raised in a testamentary suit was whether the deceased had destroyed, with the intention of revoking it, a will which was not forthcoming; the Court refused to send the issues for trial at the assizes (*g*).

Ord. XXXVI. r. 30. Papers for judge. Copies of pleadings to be delivered.

By Ord. XXXVI. r. 30, "The party entering the trial shall deliver to the proper officer two copies of the whole of the pleadings, one of which shall be for the use of the judge at the trial. Such copies shall be in print, except as to such parts (if any) of the documents as are by these rules permitted to be written."

Probate Rules, C. B. 54.

By Rule 54, Contentious Business, "The party who has deposited the record shall set down the cause for trial or hearing, and upon the day on which he so sets it down shall give notice of his having done so to each party for whom an appearance has been entered; but if he delay setting down the cause for trial or hearing for the space of one month after the Court has directed the mode in which the questions at issue shall be tried or heard, either of the other parties may set the cause down for trial or hearing, and give a similar notice. A copy of every such notice shall be filed in the registry; and the cause, unless the judge shall otherwise direct, shall come on in its turn."

Rule 55, C. B.

And by Rule 55, Contentious Business, "No cause is to be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the written consent of all parties to the suit, previously filed in the registry."

Entering action for trial.

These two rules must be read with the above Rules 11, 12, 14 and 30 of Ord. XXXVI. There is now no record

(*f*) *Ridgway* v. *Abingdon* (1863), 32 L. J. P. 107.

(*g*) *Beech* v. *Rathbone* (1866), 35 L. J. P. & M. 26.

to be deposited, but two copies of the pleadings, together with a præcipe with 3*l.* in stamps affixed on it, are filed in the principal registry in its place. Notice of trial must be given to all parties who have entered an appearance, including *parties cited* and *interveners*, and the action will not come on for trial until after the expiration of ten days from the time it has been entered.

Ord. XXXVI. r. 31. Proceedings at trial.

By Ord. XXXVI. r. 31, "If, when a trial is called on, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him."

Default of appearance by defendant at trial. R. 32.

By Rule 32, "If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action, but if he has a counterclaim, then he may prove such counterclaim so far as the burden of proof lies upon him."

Default of appearance by plaintiff.

R. 33. Judgment by default may be set aside on terms.

By Rule 33, "Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex."

R. 34. Adjournment of trial.

By Rule 34, "The judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit."

R. 35. *Habeas corpus* to bring up party to attend trial.

By Rule 35, "Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued from the Central Office, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the Court or a judge shall so direct, without payment of any fee."

R. 36. Speeches to jury.

By Rule 36, "Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore."

R. 38. Disallowance of vexatious questions in cross-examination.

By Rule 38, "The judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter."

R. 39. Judgment—further consideration.

By Rule 39, "The judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or judge."

R. 40. Times of commencement and termination of trial.

By Rule 40, "The registrar, master, or other proper officer present at any hearing or trial, shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place, for communication to the taxing officer if required."

R. 41. Entry of findings of fact on trial at assizes, &c.

By Rule 41, "Upon every trial at the assizes . . . . where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate or master shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose."

The associate's certificate is brought into the registry and the registrar draws up the decree. (Fee, 1*l.*)

By Rule 42, "If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate or master to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in the Form No. 17 in Appendix B. (*h*), with such variations as circumstances may require" (p. 891). R. 42. Certificate for entry of judgment.

Motion for New Trial (Ord. XXXIX.).

Rule 1. Every motion for a new trial or to set aside a verdict, finding, or judgment, shall be made, where there has been a trial without a jury, by appeal to the Court of Appeal, and upon the hearing of such motion the Court of Appeal shall have all such powers as are exerciseable by it upon the hearing of an appeal. Court to which motion for new trial, &c. shall be made, where no jury.

Amended by R. S. C., Feb. 1891, r. 2.

Rule 1A. Every motion for a new trial, or to set aside a verdict, finding, or judgment where there has been a trial thereof, or of any issue therein with a jury, shall be entered in the Court of Appeal in the same way as motions by way of appeal to the Court of Appeal are now entered where there has been a trial without a jury. Such first-mentioned motions shall be subject to the provisions of Ord. XXXIX. r. 4; and shall be brought before the Court of Appeal in like manner as an appeal. Motion for new trial after trial with a jury.

In Probate appeals three copies of the order appealed from and three copies of the notice must be filed in the Contentious Department.

Now by the Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 1, it is enacted that "from and after the commencement of this Act every motion for a new trial, or to set aside a verdict, finding, or judgment, in any cause or matter in the High Court in which there has been a trial thereof, or of any issue therein with a jury shall be heard and deter- Jud. Act, 1890, s. 1. Motions for new trial.

(*h*) See form in Appendix. As to the power of the judge to amend pleadings in the course of a trial, see *Riding* v. *Hawkins* (1889), 14 P. D. 56; 58 L. J. P. 48; 60 L. T. 869.

mined by the Court of Appeal and not by a Divisional Court of the High Court: Provided always, that such motions shall be heard and determined before not less than three judges of the Court of Appeal sitting together.

"This section shall extend to every such motion of which notice may have been given, whether before or after the passing of this Act, but which has not been heard before the commencement of this Act."

Jud. Act, 1890, s. 2. Motions for judgment.

And by sect. 2, "Every motion for judgment in any such cause or matter shall be heard and determined by the judge before whom such trial with a jury took place, and not by a Divisional Court, unless it be impossible or inconvenient that such judge should act, in which case such motion shall be heard and determined by some other judge to be nominated by the President of the Division to which the cause or matter belongs."

Ord. XXXIX. r. 2. Same judge not to sit on motion for new trial.

By Rule 2, "No judge shall sit on the hearing of any motion for a new trial in any cause or matter tried with a jury before himself."

R. 3. Mode of application for new trial.

By Rule 3, "Every application for a new trial shall be by notice of motion, and no rule *nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of."

This rule applies to the Probate Division as well as to the King's Bench (*i*).

R. 4. Time for service of notice of motion.

By Rule 4, "The notice of motion shall be a fourteen days' notice, and shall be served within the times following: viz., if the trial has taken place in London or Middlesex, within eight days after the trial; if the trial has taken place elsewhere than in London or Middlesex, within seven days after the last day of sitting on the circuits for England and Wales during which the trial shall have taken place. The time of the vacations shall

(*i*) *Murfett* v. *Smith* (1887), 12 P. D. 116; 56 L. J. P. 87; 57 L. T. 498.

not be reckoned in the computation of the time for serving the notice of motion."

This rule applies only to motions for new trials of cases tried with a jury. A motion for a new trial of a case tried by a judge without a jury is treated as an appeal within Ord. LVIII. r. 15. An application for an extension of time to appeal must be made to the Court of Appeal.

By Rule 5, "The notice may be amended at any time by leave of the Court or a judge on such terms as the Court or judge may think just." R. 5. Amendment of notice of motion.

By Rule 6, "A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties." R. 6. Ground for granting new trial.

By Rule 7, "A new trial may be ordered on any question whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question." R. 7. New trial ordered on any one question.

Security for Costs.—The Court of Appeal may, on a motion for a new trial, grant an order for security of costs, and if the security is not given within the time limited, the appeal is dismissed. The Court will not order security unless good cause is shown.

In a testamentary suit, the jury, being unable to agree, was discharged without giving a verdict. The question in dispute, the capacity of the deceased, was afterwards referred to a second jury, who found in the affirmative and for the plaintiff. Application was made for a new

Plaintiff convicted of perjury, new trial refused notwithstanding.

trial on the ground of the verdict being against the weight of evidence, but it was refused. Subsequently the plaintiff was convicted of perjury in reference to the evidence he gave in the suit:—Held, that the circumstance was not in itself sufficient to justify the Court in allowing a new trial after an application with that object had been rejected (*k*).

Motion for Judgment.

Ord. XL. r. 1. Motion for judgment. Judgment on motion for judgment.

By Ord. XL. r. 1, "Except where by the Acts or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment."

R. 3. Where judgment is wrong on the finding of a jury.

By Rule 3, "Where, at or after a trial with a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered."

R. 4. Setting aside judgment directed to be entered by judge.

By Rule 4, "Where, at or after a trial by a judge, either with or without a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong."

R. 5. Applications to Court of Appeal.

By Rule 5, "An application under Rules 3 and 4 of this Order shall be to the Court of Appeal."

All cases falling within these rules are subject to Ord. XXXIX. r. 1A. The time, therefore, for applying to the Court of Appeal under these rules is fixed by Ord. XXXIX. r. 4 (S. C. R.).

Jud. Act, 1890, s. 2.

Now, by sect. 2 of the Judicature Act, 1890 (53 & 54 Vict. c. 44), all such motions must be made to the judge

(*k*) *Davies* v. *Brecknell* (1873), L. R. 3 P. & D. 88; 42 L. J. P. 39; 28 L. T. 604.

before whom the trial was had in every case that has been heard with a jury, or to some other judge to be nominated by the President of the Division.

Ord. XL. r. 7. Setting down motion for judgment where issues have been directed and tried.

By Rule 7, "Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties."

R. 8. Where some only of issues directed have been tried, any party may apply to set down action on motion for judgment.

By Rule 8, "Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact."

R. 9. Motion to be set down within one year.

By Rule 9, "No motion for judgment shall, except by leave of the Court or a judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do."

R. 10. Where judgment given, &c. on motion for new trial, &c.

By Rule 10, "Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials

necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit."

Ord. XLI. r. 3. Date of judgment pronounced in Court.

By Ord. XLI. r. 3, "Where any judgment is pronounced by the Court or a judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or judge shall otherwise order, and the judgment shall take effect from that date: provided that by special leave of the Court or a judge a judgment may be ante-dated or post-dated."

R. 5. Time to be stated for doing any act ordered to be done. Memorandum to be indorsed.

By Rule 5, "Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz. :—

"'If you, the within-named A. B., neglect to obey this judgment [*or* order] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment [*or* order].'"

R. 6. Entry on production of affidavit or document.

By Rule 6, "Where under the Acts or these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly."

R. 7. Entry on production of order or certificate.

By Rule 7, "Where by the Acts or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production

of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly."

R. 9. Judgment by consent where defendant appears by a solicitor.

By Rule 9, "In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent."

R. 10. Where consent of defendant in person.

By Rule 10, "Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor."

Right to begin.

At the trial of the action the party on whom the burden of proof is thrown has the right to begin. Therefore, wherever a party propounds a last will, and the validity of such will is disputed, the party propounding has the right to begin (*l*); but where the party opposing the will admits the due execution, but alleges that the will was obtained by undue influence, fraud, or the like, or that the will was revoked, then the burden of proof is thrown upon him, and he has the right to begin (*m*).

Compromise.

The Court has jurisdiction to make terms of compromise in a probate action a rule of Court, and to enforce it as such (*n*).

Compromise before trial.

Where an action has been compromised before trial, the Court will, if it thinks fit, order the contentious proceedings to be discontinued and the terms of compromise to be filed in the registry (*o*).

(*l*) See *Barry* v. *Butlin*, 1 Curt. 638; *Cross* v. *Cross* (1864), 3 S. & T. 292; 33 L. J. P. 49.

(*m*) See *Hutley* v. *Grimstone* (1880), 5 P. D. 24; 48 L. J. P. 68; 41 L. T. 53; *Tate* v. *Tate*, 63 L. T. 112.

(*n*) *Harvey* v. *Allen*, 1 S. & T. 151.

(*o*) *Roadnight* v. *Carter*, 3 S. & T. 421. See also *Saunders* v. *Evans* (1859), 30 L. J. P. 184.

Next of kin bound by decree;

A next of kin, although not cited to see proceedings and not having intervened, is bound by a decree in a suit in which a will is contested by the other next of kin, if he was cognizant of the suit and had an opportunity of intervening.

but not where suit is compromised.

This rule does not apply to a case when the parties to a suit compromise it, and the decree is founded on a compromise. The rule as regards compromise is that it is only binding on the parties who agree to it. (*Wytcherley* v. *Andrews* (1871), L. R. 2 P. 327; 40 L. J. P. 57.)

Proof in Solemn Form.

R. 4. C. B.

Rule 4. "Executors or other parties who, previously to the passing of the Court of Probate Act, 1857, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities and effect as heretofore."

R. 5.

Rule 5. "Next of kin and others who, previously to the passing of the said Act, had a right to put executors or parties entitled to administration with will annexed upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs as heretofore."

When a will is proved in solemn form, it is necessary that all persons having an interest in the estate of the deceased, either under a will or in the case of an intestacy, should be cited. And the decree is binding on all parties to, or cognizant of, the action, and who agreed to a compromise.

But if a person, although cognizant of the action, did not intervene and had no notice of a compromise, he is not debarred from entering an action to revoke the probate. (*Young* v. *Holloway*, (1895) P. 87; 64 L. J. P. 55.)

An executor for greater security may propound and prove a will in solemn form, in the first instance, by issuing a writ and citing the next of kin and "all others pretending interest in general" to see proceedings. The

will cannot afterwards be set aside (providing there has been no irregularity in the proceedings) when the witnesses are dead. (See Williams on Executors.)

But although a will is proved in solemn form, the probate can be called in and revoked if a will of later date is discovered, or if the decree has been obtained by fraud. (*Priestman* v. *Thomas* (1884), 9 P. D. 70; 53 L. J. P. 109; 58 L. T. 58.

In proving the due execution of the will, it is only necessary to call one of the attesting witnesses.

Short Causes.

If a party desires to prove a will in solemn form, it will be heard as a short cause under the following conditions:—

(1) Where no appearance has been entered by the defendants or by the parties cited to see proceedings. (An affidavit of service of the writ or citation and a certificate of no appearance will be required (*p*).)

(2) In default of pleading: or where the defendant withdraws the defence.

(3) Where a compromise has been entered into.

These causes are usually heard on Mondays during the sittings. Leave must be obtained from the Clerk of the Rules and Orders at the Probate Court, and notice given in the Contentious Department at the probate registry.

If the action has not been entered for trial it must be set down in the usual way, by leaving two copies of the pleadings, or, if there are no pleadings, two copies of the writ and a præcipe for setting down with 3*l.* in stamps on it.

The usual affidavit of scripts should also be filed unless otherwise directed.

(*p*) A certificate of no appearance is obtained from the Central Office. The affidavit of service must be first marked in the Contentious Department.

CHAPTER XIV.

APPEALS—TO COURT OF APPEAL FROM PROBATE DIVISION—TO HOUSE OF LORDS—JURISDICTION OF COUNTY COURTS AND APPEALS FROM THEM.

Jud. Act, 1873, s. 49. What orders shall not be subject to appeal.

By the Judicature Act, 1873, s. 49, "No order made by the High Court of Justice or any judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or judge making such order."

Ibid. s. 50. As to discharging orders made in chambers.

And by sect. 50, "Every order made by a judge of the said High Court in chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the judge sitting in court, according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal" (*a*).

Ord. LVIII. r. 1. Appeal to be by re-hearing and on motion. Appeal from part.

By Ord. LVIII. r. 1, "All appeals to the Court of Appeal shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any

(*a*) See *Rigg* v. *Hughes* (1884), 9 P. D. 68; 53 L. J. P. 62; 50 L. T. 293.

judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part."

By Rule 2, "The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit." R. 2. Notice of appeal, service of. Amendment of.

By Rule 3, "Notice of appeal from any judgment, whether final or interlocutory . . . . shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice." R. 3. Time for. 14 days. 4 days.

By Rule 4, "The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to R. 4. Power of Court of Appeal to amend; admit further evidence, or draw inferences of fact.

make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just."

Costs of appeal.

R. 5. Power to order new trial.

By Rule 5, "If upon hearing of an appeal, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had."

R. 6. Appeal by respondent.

By Rule 6, "It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal; but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs."

R. 7. Length of notice of, by respondent.

By Rule 7, "Subject to any special order which may be made notice by a respondent under the last preceding rule shall, in the case of any appeal from a final judgment, be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice."

R. 8. Setting down appeal.

By Rule 8, "The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the

appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal."

R. 10. *Ex parte* applications.

By Rule 10, "Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Court of Appeal may allow."

R. 11. Question of fact.

By Rule 11, "When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows:

Evidence.

"(a) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed:

Judge's notes.

"(b) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the Court may deem expedient."

R. 12. Order to print evidence.

By Rule 12, "Where evidence has not been printed in the Court below, the Court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order."

R. 13. Evidence as to direction of judge to jury or assessors.

By Rule 13, "If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient."

R. 14. Interlocutory order not to

By Rule 14, "No interlocutory order or rule from which there has been no appeal shall operate so as to bar

prejudice appeal.

or prejudice the Court of Appeal from giving such decision upon the appeal as may be just."

R. 15. Time for appealing from interlocutory and final order.

By Rule 15, "No appeal to the Court of Appeal from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of fourteen days, and no other appeal shall, except by such leave, be brought after the expiration of three months. The said respective periods shall be calculated, in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal."

Security for costs.

R. 15A. Time for appealing against order made on further consideration and on summons to vary.

By Rule 15A, "The time for appealing against an order made on the further consideration of a cause, and on the hearing of a summons to vary the certificate on which such order is made, shall be the same as the time for appealing against the order on further consideration."

R. 16. Stay of proceedings on appeal.

By Rule 16, "An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct."

R. 17. Applications which may be made either to Court below or C. A. to be made first to Court below.

By Rule 17, "Wherever under these rules an application may be made either to the Court below or to the Court of Appeal, or to a judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or judge below."

R. 18. Applications to a single judge.

By Rule 18, "Every application to a judge of the Court of Appeal shall be by motion, and the provisions of Ord. LII. shall apply thereto."

Appeal to the House of Lords.

From the Court of Appeal there is a final appeal to the House of Lords, which is regulated by the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59).

Appellate Jur. Act, 1876, s. 3.

By sect. 3, "Subject as in this Act mentioned, an appeal shall lie to the House of Lords from any order or judgment of any of the Courts following; that is to say,

"(1) Of her Majesty's Court of Appeal in England; and

"(2) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and

"(3) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute."

Sect. 4. Form of appeal to House of Lords.

By sect. 4, "Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal."

Sect. 11. Security for costs.

By sect. 11, appeals to the House of Lords are to be "subject to such conditions . . . . as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords."

Appeal to House of Lords must be within one year.

The appeal to the House of Lords must be within one year from the date of the decree or order appealed against.

Security for costs.

The appellant must give security for costs to the amount of several hundred pounds. For particulars, see the Practice and Standing Orders of the House of Lords, Annual Practice, 1906, Vol. II. Part VII. See also Denison's Appeal Practice of the House of Lords.

County Court jurisdiction in probate matters.

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 54; C. P. Act, 1858 (21 & 22 Vict. c. 95), s. 10.

County Courts have a limited jurisdiction in probate matters. Such jurisdiction was originally conferred by sect. 54 of the Court of Probate Act, 1857, since repealed, and it is now regulated by sect. 10 of the Court of Probate Act, 1858 (21 & 22 Vict. c. 95), by which it is enacted that "Where it appears by affidavit to the satisfaction of a registrar of the principal registry that the testator or intestate, in respect of whose estate a grant or revocation of a grant of probate or letters of administration is applied for, had at the time of his death his fixed place of abode in one of the districts specified in Schedule (A.) to the said 'Court of Probate Act,' and that the personal estate in respect of which such probate or letters of administration are to be or have been granted exclusive of what the deceased may have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of debts due and owing from the deceased, was at the time of his death under the value of 200*l.*, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of 300*l.* or upwards, the judge of the County Court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode, shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto."

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 55. Registrar of County Court to transmit certificate of decree for grant or revocation of probate.

By sect. 55 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), "On a decree being made by the judge of a County Court for the grant or revocation of a probate or administration in any such cause, the registrar of the County Court shall transmit to the district registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode a certificate under the seal of the County Court of such decree having been made, and thereupon, on the applica-

tion of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree."

Ibid. s. 56. The judge of the County Court to decide causes and enforce judgments as in other cases.

By sect. 56, "The judge of any County Court before whom any disputed question shall be raised relating to matters and causes testamentary under this Act shall, subject to the rules and orders under this Act, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the County Court."

Ibid. s. 57. Affidavit of the facts giving the County Court jurisdiction to be conclusive, unless disproved while the matter is pending.

By sect. 57, "The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of the County Court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorizing the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the judge of a County Court before whom any matter is pending under this Act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied

to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated would not have authorized him to exercise such contentious jurisdiction, he shall stay all further proceedings in his Court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just."

C. P. Act, 1857 (20 & 21 Vict. c. 77), s. 58. As to appeals from County Courts.

By sect. 58, "Any party who shall be dissatisfied with the determination of the judge of the County Court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this Act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the rules and orders to be made under this Act, and the decision of the Court of Probate on such appeal shall be final."

Ord. LIX. r. 4. Hearing and entry of appeals from inferior Courts.

Ord. LIX. r. 4, "Every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior Courts under sect. 45 of the principal Act. All . . . . . Probate and Admiralty appeals from inferior Courts, and from justices . . . . . shall be to a Divisional Court of the Probate, Divorce and Admiralty Division . . . . ."

C. P. Act, 1857, s. 59. Not obligatory to apply for probate, &c. to district registries or County Court, but may in every case be made to Court of Probate.

By sect. 59, "It shall not be obligatory on any person to apply for probate or administration to any district registry, or through any County Court, but in every case such application may be made through the principal registry of the Court of Probate, wherever the testator or intestate may at the time of his death have had his fixed place of abode: provided, that where in any contentious matter arising out of any such application it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a County Court, the Court of Probate may send the cause to such County Court, and the judge thereof shall proceed therein as if

such application and cause had been made to and arisen in his Court in the first instance."

Sect. 11 of the Court of Probate Act, 1858, repeals sect. 54 of the Court of Probate Act, 1857.

C. P. Act, 1858, s. 11.

By sect. 12, "The said Court of Probate Act, section fifty-nine, shall, so far as the County Courts or a judge thereof are concerned, apply to an application for the revocation of a grant of probate or administration as well as to an application for any such grant."

Sect. 59 of 20 & 21 Vict. c. 77, to apply to applications for revocation of grants.

The Probate Division has no power to order the mode of trial of a cause sent by it to be tried in a County Court (*b*).

Probate Division cannot regulate mode of trial in County Court.

In estimating the value of the real estate to which a deceased was entitled at the time of his death for the purpose of deciding whether the County Court has jurisdiction, charges upon such estate cannot be taken into consideration. If the estate be of the value of 300*l*., but the value of the deceased's interest in it is reduced by mortgage to less than 300*l*., the County Court has no jurisdiction (*c*).

Value of real estate. How estimated.

Where proceedings have been commenced in the Probate Division, the Court will receive evidence from both sides as to the state of the property and the place of the abode of the deceased, before it determines whether or not it will send the cause to the proper County Court (*d*).

Case will not be sent from Probate Division to County Court without hearing evidence as to property from both sides.

Where a testamentary cause in which a County Court has jurisdiction has been commenced in, or has been transferred to a County Court, the Probate Division has no power to grant a new trial or to make any order in the cause unless it is brought before it by way of an

Probate Division cannot grant new trial in County Court case, except on appeal.

(*b*) *Norris* v. *Allen* (1863), 2 S. & T. 601; 32 L. J. P. 3; 7 L. T. 338. See also *Macleur* v. *Macleur* (1868), L. R. 1 P. & D. 604; 37 L. J. P. 68.

(*c*) *Davies* v. *Brecknell* (1871), L. R. 2 P. & D. 177; 40 L. J. P. 15; 23 L. T. 569. See also *Thomas* v. *Nurse* (1870), 39 L. J. P. 80.

(*d*) *Slater* v. *Alvey* (1870), L. R. 2 P. & D. 154; 23 L. T. 324.

appeal from the determination of the judge of the County Court in point of law or upon admission or rejection of evidence (*e*).

Court may direct trial in County Court though parties desire it at assizes.

When a County Court has jurisdiction, the Court may, though all the parties to the action desire it to be tried at the assizes, direct it to be tried in the County Court. So where, on an application acquiesced in by all parties to the cause, to direct an issue in a testamentary suit to be tried at the assizes, it appeared from affidavits that the whole property did not amount to 300*l.*, the Court required that it should also appear that the personalty was not under 200*l.*, so as to show that the County Court had no jurisdiction (*f*).

When judgment has been pronounced in the County Court, the certificate of the registrar is sent up to the probate registry and filed there.

Ord. XXI. r. 18, applies to County Courts.

Ord. XXI. r. 18, which enables a party opposing a will to give notice to the other side that he merely insists on the will being proved in solemn form, and regulates his position as to costs after he has given such notice, applies to County Courts as well as to the High Court.

(*e*) *Zeally* v. *Veryard* (1866), L. R. 1 P. & D. 195; 35 L. J. P. 127; 14 L. T. 769.

(*f*) *Dunn* v. *Dunn* (1861), 1 S. & T. 521; 30 L. J. P. 40.

CHAPTER XV.

MISCELLANEOUS POINTS OF PRACTICE—SERVICE OF ORDERS — ENFORCING ORDERS — SUBPŒNAS — AFFIDAVITS — PAUPERS — PARTIES—TIME AND TIME TABLE.

Miscellaneous Points of Practice—Service of Orders.

By Ord. LXVII. r. 1, "Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited." Ord. LXVII. r. 1. Service of orders, &c. Showing original order on service.

By Rule 2, "All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications, in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours at the address for service of the person to be served, as defined by Ords. IV. and XII., with any person resident at or belonging to such place, or if posted in a prepaid registered envelope addressed to the person to be served at such address for service as aforesaid: Provided that where service under this rule is made by registered post, the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof." R. 2. Mode and time of service where not personal.

This is as amended by S. C. R., July, 1903, by making service by prepaid registered post good service in cases within the rule.

By Rule 3, "Notices sent from any office of the Supreme Court may be sent by post; and the time at R. 3. Service of notices from

Supreme Court.

which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service."

R. 4. Service where no appearance or no address for service.

By Rule 4, "Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by Ords. IV. and XII., all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer."

R. 5. Manner of personal service.

By Rule 5, "Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these rules, or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons."

R. 6. Substituted service.

By Rule 6, "Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these rules or otherwise, and it is made to appear to the Court or a judge that prompt personal service cannot be effected, the Court or judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just."

R. 7. Service upon solicitor of party formerly appearing in person.

By Rule 7, "Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor."

By Rule 8, "Where a person who is not a party appears in any proceeding either before the Court or in chambers, service upon the solicitor in London by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service." R. 8. Service upon London solicitor of person not a party.

By Rule 9, "Affidavits of service shall state when, where, and how and by whom, such service was effected." R. 9. Affidavits of service.

By Ord. LXX. r. 1, "Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or judge shall think fit." Ord. LXX. r. 1. Effect of non-compliance. Non-compliance with rules not to render proceedings void.

By Rule 2, "No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity." R. 2. Application to set aside for irregularity, when allowed.

By Rule 3, "Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion." R. 3. Objections of irregularity.

By Rule 4, "When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs." R. 4. Costs.

By Ord. LXXII. r. 1, "No order or rule annulled by any former order shall be revived by any of these rules, unless expressly so declared." Ord. LXXII. r. 1. General rules. Repealed orders not revived.

By Rule 2, "Where no other provision is made by the Acts or these rules, the present procedure and practice remain in force." R. 2. Present practice.

By Rule 3, "During the period of any vacancy in the office of Lord Chancellor, and when the great seal is not in commission, these rules shall operate as if wherever the R. 3. Vacancy in offices of Lord Chancellor

and Lord Chief Justice.

words 'Lord Chancellor' are used, the words 'Lord Chief Justice of England' were used; and during the period of any vacancy in the office of Lord Chief Justice of England, as if wherever the words 'Lord Chief Justice of England' are used, the words 'Lord Chancellor' were used."

Under the exception in Ord. LXXII. r. 2, the rules of the Probate Court still remain in force where they do not clash with the Rules and Orders of the Supreme Court.

Enforcing Orders.

Execution.

The Probate Division is armed with the same powers of enforcing its decrees and orders as the other divisions of the High Court of Justice.

Ord. XLII. r. 2. Waiver of conditional judgment or order.

By Ord. XLII. r. 2, "Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a judge shall otherwise direct."

R. 3. Enforcing judgment for payment of money.

By Rule 3, "A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the principal Act might have been enforced at the time of the passing thereof."

Sums of money ordered to be paid under judgments in the Probate Division are usually confined to costs.

Committal orders.

It must be remembered that the Probate Division does not commit to prison for refusal to obey an order for payment of money. Such orders for commitment are only made in bankruptcy under the Debtors Act, 1869, s. 5.

In the case of a solicitor ordered to refund balance of money received by him after taxation of his bill, the Probate Division will order an attachment if he fails to comply with the Order.

By Rule 4, "A judgment for the payment of money into Court may be enforced by writ of sequestration, or, in cases in which attachment is authorized by law, by attachment." R. 4. Judgment for payment into Court.

By Rule 7, "A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal." R. 7. Judgment to do or abstain from any act.

By Rule 8, "In these rules the term 'writ of execution' shall include writs of *fieri facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term 'issuing execution against any party' shall mean the issuing of any such process against his person or property as under the preceding rules of this Order shall be applicable to the case." R. 8. Meaning of "writ of execution," &c.

Rule 9 relates to execution where a judgment has been pronounced subject to the fulfilment of some condition or contingency. R. 9.

By Rule 11, "No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution." R. 11. Writ issued on production of judgment.

By Rule 12, "No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued; R. 12. *Præcipe* for writ of execution.

and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix G. (*a*) shall be used, with such variations as circumstances may require."

R. 13. Indorsement on writ of execution.

By Rule 13, "Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be."

R. 14. Date and form of writ.

By Rule 14, "Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix H. (*b*) shall be used, with such variations as circumstances may require."

R. 15. Expenses of execution.

By Rule 15, "In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution over and above the sum recovered."

R. 16.

Rule 16 provides that the amount of money and interest to be recovered shall be indorsed on the writ of execution (*c*).

R. 17. Time to sue out *fi. fa.* or *elegit* to enforce payment of money or costs.

By Rule 17, "Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, as soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fieri facias* or one or more writ or writs of *elegit* to enforce payment thereof, subject nevertheless as follows:—

"(a) If the judgment or order is for payment within

(*a*) See form in Appendix, p. 902.
(*b*) See form in Appendix, p. 908.
(*c*) See Annual Practice, 1906, 549.

a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:

"(b) The Court or a judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit."

R. 20. Renewal of writ.

By Rule 20, "A writ of execution, if unexecuted, shall remain in force for one year only from its issue, unless renewed in the manner hereinbefore provided; but such writ may, at any time before its expiration, by leave of the Court or a judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof."

R. 21. Evidence of renewal.

By Rule 21, "The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed."

R. 22. Execution to issue within six years.

By Rule 22, "As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment, or the date of the order."

R. 24. Orders enforceable like judgments.

By Rule 24, "Every order of the Court or a judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect."

R. 25. Order of commitment under Debtors Act, 1869.

By Rule 25, "An order of commitment under the Debtors Act, 1869, shall bear date on the day on which such order was made, and shall continue in force for

one year from such date and no longer; but it may be renewed in the manner provided for writs of execution by Rule 20 of this Order."

R. 26. Rule 26 relates to execution where an order is made in favour of or against a person not a party to any cause or matter.

R. 29. Order of issue of writs. By Rule 29, "Nothing in this Order shall affect the order in which writs of execution may be issued."

Ord. XLIII. Writs of *fieri facias*, *elegit*, and sequestration. Ord. XLIII. relates to writs of *fieri facias*, *elegit*, and sequestration.

R. 1. Effect and manner of execution of. By Rule 1, "Writs of *fieri facias* and *elegit* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed."

The practice under this Order is the same in the Probate Division as in the other divisions of the High Court. Writs of execution are issued in the Contentious Department.

Subpœna.

Ord. XXXVII. r. 26. Form of *præcipe* for a *subpœna*. By Rule 26, "Where it is intended to sue out a *subpœna*, a *præcipe* for that purpose, in the Form No. 21 in Appendix G., and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the Central Office" (pp. 906, 968).

In probate actions, for "Central Office" read "Probate Registry."

R. 27. Form of writ of *subpœna*. By Rule 27, "A writ of *subpœna* shall be in one of the Forms 1 to 7 in Appendix J., with such variations as circumstances may require" (pp. 916, 967).

R. 29. Number of persons in a *subpœna* other than a *subpœna duces tecum*. By Rule 29, "Every *subpœna* other than a *subpœna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names."

By Rule 30, "No more than three persons shall be included in one *subpœna duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpœna* for each person if it shall be deemed necessary or desirable." R. 30. Number of persons in *subpœna duces tecum*.

By Rule 31, "In the interval between the suing out and service of any *subpœna*, the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected *præcipe* of such *subpœna* marked with the words 'altered and re-sealed,' and signed with the name and address of the solicitor suing out the same." R. 31. Correction of errors in *subpœna*.

By Rule 32, "The service of a *subpœna* shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ." R. 32. Service of *subpœna*.

By Rule 33, "Affidavits filed for the purpose of proving the service of a *subpœna* upon any defendant must state when, where, and how, and by whom, such service was effected." R. 33. Affidavit to prove service of *subpœna*.

By Rule 34, "The service of any *subpœna* shall be of no validity if not made within twelve weeks after the *teste* of the writ." R. 34. Within what time *subpœna* to be served.

All *subpœnas* in the Probate Division are issued from the Probate Registry.

By Rule 132 (Contentious Business), "The issuing of fresh *subpœnas* in each term shall be abolished, and it shall not be necessary to serve more than one *subpœna* upon any witness." Probate Rules, C. B. 132.

Affidavits.

By Ord. XXXVIII. r. 1, "Upon any motion, petition, or summons, evidence may be given by affidavit; but the Court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit." Ord. XXXVIII. r. 1. Affidavits and depositions. Evidence on motions, &c.

R. 2. Title of affidavits.

By Rule 2, "Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer."

A matter in the Probate Division, after giving the full title of the Division, should be headed,

If no action is pending,

"In the estate of A. B."

If an action is pending,

"In the estate of A. B.,

"C. *v.* D."

R. 3. Contents of affidavits.

By Rule 3, "Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same."

R. 4. Before whom affidavits may be sworn.

By Rule 4, "Affidavits sworn in England shall be sworn before a judge, district registrar, commissioner to administer oaths, or officer empowered under these rules to administer oaths."

Time and place of taking affidavits.

Rule 5. "Every commissioner to administer oaths shall express the time when and the place where he shall take any affidavit, or the acknowledgment of any deed, or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the Court or a judge; and every such commissioner shall express the time when, and the place where, he shall do any other act incident to his office."

Affidavits, &c. how to be sworn and

Rule 6. "All examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters

depending in the High Court, and also acknowledgments required for the purpose of enrolling any deed in the Central Office, may be sworn and taken in Scotland or Ireland or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions; and the judges and other officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or to any other deed or document."

taken in Scotland, Ireland, the Channel Islands, colonies, and foreign parts.

By German law a British consul is not allowed to administer an oath, and the witness must be sworn before a German judge. (*Fawcus, In goods of* (1884), 9 P. D. 241; 54 L. J. P. 47.)

Rule 7. "Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed book-wise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule."

Form of affidavits.

By Rule 8, "Every affidavit shall state the description and true place of abode of the deponent."

R. 8. Description and abode of deponent to be stated.

By Rule 9, "In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the 'above-named' deponents."

R. 9. Affidavits made by two or more deponents.

R. 10. Affidavits to be filed in proper office.

By Rule 10, "Every affidavit . . . used in probate actions shall be filed in the Probate Registry: . . . There shall be *indorsed on* every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a judge shall otherwise direct."

R. 11. Scandalous matter.

By Rule 11, "The Court or a judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client."

R. 12. Alterations in affidavits.

By Rule 12, "No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure, shall without leave of the Court or a judge be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it."

R. 13. Affidavits by illiterate or blind persons.

By Rule 13, "Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent."

R. 14. Use of defective affidavit.

By Rule 14, "The Court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other

irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received."

By Rule 15, "In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in chambers, who shall send it to be filed. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office." R. 15. Stamping of affidavits, and use of office copies.

By Rule 16, "No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself." R. 16. Affidavit sworn before solicitor or his agent.

By Rule 17, "Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner." R. 17. Affidavit sworn before clerk or partner of solicitor.

By Rule 18, "Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a judge." R. 18. Special times for filing affidavits.

By Rule 19, "Except by leave of the Court or a judge, no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion." R. 19. Affidavits in support of *ex parte* applications.

Affidavits are also extensively used in non-contentious business, and as to such the practice is not affected by the Judicature Acts. See, also, Probate Rules, N.-C. B. 51 to 58, inclusive, printed *in extenso* in the Appendix, and Rules 80 to 86 C. B.

Paupers.

By Rule 22, "Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper Ord. XVI. r. 22. Suing or

defending as pauper.

on proof that he is not worth 25*l.*, his wearing apparel and the subject-matter of the cause or matter only excepted."

It is in the discretion of the Court to admit a person as a pauper at any stage of the proceedings.

R. 23. Case to be laid before counsel.

By Rule 23, "A person desirous of suing as a pauper shall lay a case before counsel for his opinion, whether or not he has reasonable grounds for proceeding."

In the case of a pauper applying to defend a suit, no case or opinion of counsel is necessary, only an affidavit by the applicant as to his means.

R. 24. Affidavit by party or solicitor that case is true.

By Rule 24, "No person shall be permitted to sue as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the Court or judge or proper officer to whom the application is made, and no fee shall be payable by a pauper to his counsel or solicitor."

R. 25. No fees payable.

By Rule 25, "A person admitted to sue or defend as a pauper shall not be liable to any Court fee."

R. 26. Counsel and solicitor may be assigned.

By Rule 26, "Where a person is admitted to sue or defend as a pauper, the Court or a judge may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or judge that he has some good reason for refusing."

The Court has jurisdiction to assign the official solicitor to a pauper, but it is only exercised under special circumstances.

R. 27. No fees to be taken from pauper.

By Rule 27, "Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him, any fee, profit, or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward, shall be guilty of a contempt of Court."

By Rule 28, "If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper." R. 28. If pauper agrees to pay fees he is to be dispaupered.

By Rule 29, "No notice of motion shall be served or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper except for the discharge of his solicitor, unless it is signed by his solicitor." R. 29. Notice of motion, &c. on behalf of—how to be signed.

"**His Solicitor.**"—Where no solicitor has been assigned, this rule does not apply.

By Rule 30, "It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause." Duty of solicitor of.

If this duty is not carefully discharged the solicitor may be called upon (by motion) to show why he should not personally pay any costs occasioned by his default. (*Martinson* v. *Clowes*, 33 W. R. 555.)

By Rule 31, "Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a judge shall otherwise direct, be taxed as in other cases." Costs to be taxed.

Rule 25. "Where a pauper omits to proceed to trial, pursuant to notice, he or she may be called upon by summons to show cause why he or she should not pay costs, though he or she has not been dispaupered, and why all future proceedings should not be stayed until such costs are paid." R. 25, C. B.

A person suing *in formâ pauperis*, who has had counsel assigned to him by the Court, cannot appear by another counsel until he has been dispaupered (*d*).

(*d*) *Hamer* v. *Boreham* (1858), 1 S. & T. 26; 27 L. J. P. 107.

A plaintiff who, through poverty, is unable to prosecute a suit instituted by him, should apply for leave to continue the suit *in formâ pauperis*. If he does not, and the suit is dismissed for non-prosecution, he will not afterwards be allowed to re-commence it *in formâ pauperis* (*e*).

Parties.

Ord. XVI. r. 1. Persons claiming jointly, severally, or in the alternative may be plaintiffs.

By Rule 1, "All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise; provided that, if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the Court or a judge may order separate trials, or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief unless the Court or a judge, in disposing of the costs, shall otherwise direct."

R. 2. Substitution of other person for wrong plaintiff.

By Rule 2, "Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just."

(*e*) *Cathrell* v. *Jeffree* (1864), 33 L. J. P. 178.

By Rule 3, "Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and the defendant has set up a counterclaim or set-off, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon." R. 3. Counterclaim. Misjoinder.

By Rule 4, "All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment." R. 4. Joint, several, and alternative claims against defendants.

By Rule 5, "It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest." R. 5. Defendant need not be interested in *all* the relief claimed.

By Rule 7, "Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties." R. 7. Plaintiff in doubt as to person from whom redress is to be sought.

By Rule 9, "Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested." R. 9. Numerous persons.

By Rule 10, "Subject to the provisions of the Acts and these rules, in all probate actions the rules as to parties, in use in the Court of Probate previously to the commencement of the principal Act, shall continue to be in force." R. 10. Probate actions.

All parties in probate actions must be brought before the Court.

It may be well to observe here that, in all actions in the Probate Division, every person having or pretending to have an interest in the estate of the deceased must be brought before the Court in some way, otherwise any decree of the Court made in such actions will not bind them, and it is often simpler and cheaper to make such persons parties by putting them on the record as plaintiffs or defendants, rather than by citing them to see proceedings, as to which, see *ante*, p. 370.

Misjoinder and non-joinder.

By Rule 11, "No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the

Striking out and adding parties.

names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.

Consent of plaintiff or next friend.

No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice."

By Rule 12, "Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or judge at any time before trial by motion or summons, or at the trial of the action in a summary manner."

By Rule 13, "Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served." Where defendant added.

By Rule 39, "The Court or a judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question." Conduct of action.

By Rule 41, "It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the Central Office in the same manner." Order for liberty to attend not necessary. Appearance to be entered.

By Rule 44, "Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action." Service of notice of judgment on infants, &c.

By Rule 46, "If in any cause, matter, or other proceeding it shall appear to the Court or a judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons (if any) as the Court or judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal R. 46. Where no legal personal representative, Court may appoint or dispense with.

personal representative of the deceased had been a party to the cause, matter, or proceeding."

Ord. XVII. r. 1. Change of parties by death, &c. Action not abated where cause of action continues.

By Ord. XVII. r. 1, "A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite;* and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death."

R. 2. In case of marriage, &c. or devolution of estate, Court may order successor to be made a party or served with notice.

By Rule 2, "In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or judge shall think just, and shall make such order for the disposal of the cause or matter as may be just."

R. 4. Order to carry on proceedings.

By Rule 4, "Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a judge, upon an allegation of such change, or transmission of interest or

liability, or of such person interested having come into existence."

R. 5. Service of order to continue action.

By Rule 5, "An order obtained as in the last preceding rule mentioned shall, unless the Court or judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons."

R. 6. Application to discharge order by person under no disability or having a guardian.

By Rule 6, "Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order as in Rule 4 mentioned, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the service thereof."

R. 7. By person under disability, having no guardian.

By Rule 7, "Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in Rule 4 mentioned, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person."

R. 8. Death of sole plaintiff or defendant.

By Rule 8, "When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such

time as may be ordered: and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by Ord. XLII. r. 23."

R. 9. Solicitor of plaintiff to give notice of abatement.

By Rule 9, "Where any cause or matter becomes abated, or in the case of any such change of interest as is by this order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the cause-book opposite to the name of such cause or matter."

R. 10. Abated cause &c. to be struck out.

By Rule 10, "Where any cause or matter shall have been standing for one year in the cause-book marked as 'abated,' or standing over generally, such cause or matter at the expiration of the year shall be struck out of the cause-book."

For cases under parties, see *ante*, pp. 237—244.

Time.

Ord. LXIV. r. 1. Time. "Month" means calendar month.

By Ord. LXIV. r. 1, "Where by these rules, or by any judgment or order given or made after the commencement of the principal Act, time for doing any act or taking any proceeding is limited by months, and where the word 'month' occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed."

R. 2. Exclusion of Sundays, &c.

By Rule 2, "Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time."

R. 3. Time expiring on Sunday or close day.

By Rule 3, "Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or

proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open."

By Rule 4, "No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a judge." R. 4. No delivery, &c. of pleading in long vacation.

By Rule 5, "The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by the Court or a judge." R. 5. Long vacation not to be reckoned in time for delivery, &c. of pleadings.

By Rule 6, "The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter." R. 6. Time for giving security for costs, when not to be reckoned.

By Rule 7, "A Court or a judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed." R. 7. Power of Court or judge to enlarge or abridge time.

By Rule 8, "The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a judge." R. 8. Enlargement of time by consent.

By Rule 11, "Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week-day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected R. 11. Time of day for service.

after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday."

This rule does not apply to writs of summons, and they may be served at any time. (*Murray* v. *Stephenson*, 19 Q. B. D. 60.)

R. 12. Number of days, how computed.

By Rule 12, "In any case in which any particular number of days, not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day."

R. 13. Length of notice after delay of one year.

By Rule 13, "In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall be deemed a proceeding within this rule."

Time Table.

Time table.

Showing the times fixed by rule for taking various proceedings.

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Tables showing the Times fixed for taking various Proceedings.

Admissions of Facts.	
Notice to admit. Any party may call on any other party to admit for the purpose of the cause matter, or issue only, any specific fact or facts	at any time not later than nine days before the day for which notice of trial has been given (Ord. XXXII. r. 4).
Admissions to be made in pursuance of such notice	within six days after service thereof (*ib.*).
Appeals.	
1. To House of Lords—	
From decree, order, judgment, or interlocutor	one year from date thereof, or if several from the date of the last (H. L. Standing Order as to appeals on or after 1st Nov. 1876).

Appeals—*continued.*

In case person entitled to appeal is under twenty-one years of age, or covert, or *non compos mentis*, or imprisoned, or out of the United Kingdom	within one year after full age, or discoverture or becoming of sound mind, or enlargement out of prison, or coming into Great Britain, but in no case more than five years from date of last decree, &c. appealed from (*ib.*).

2. To Court of Appeal—

(a) From refusal of *ex parte* application by the Court below	within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Court of Appeal may allow (Ord. LVIII. r. 10).
(b) From an interlocutory order or from a final order made in a matter not being an action, or from any order made in chambers	within fourteen days (Ord. LVIII. r. 15; J. A. 1894, s. 1, sub-s. 4).

The time is to be calculated, in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal (Ord. LVIII. r. 15, as amended by Rules of Nov. 1893).

(c) From final or interlocutory judgment (including motion for new trial of an action tried by a judge without a jury) or final order in an action must be brought	within three months (Ord. LVIII. r. 15, and notes).

The time is to be calculated, in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal (Ord. LVIII. r. 15).

(e) Notice of appeal from interlocutory orders	four days' notice (Ord. LVIII. r. 3).
(f) Notice of appeal from a final order or a final or interlocutory judgment	fourteen days' notice (Ord. LVIII. r. 3).
(g) Cross appeals. Where a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he must give notice to any party who would be affected thereby—	
(i) In the case of an appeal from an interlocutory order	two days' notice (Ord. LVIII. r. 7).
(ii) In the case of an appeal from a final judgment	eight days' notice (Ord. LVIII. r. 7).

(h) New trial. See "New Trial," *infra*.

Time table.

Appeals—*continued.*

3. To Divisional Court—	
(b) From County Courts and other inferior Courts. Such appeals are by notice of motion to be served and the appeal entered	within twenty-one days from the date of the judgment, order, or finding complained of: Such period to be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given (Ord. LIX. r. 12).
(Note.—The notice of motion is an eight days' notice (Ord. LIX. r. 10).)	
(ii) By motion for new trial. Notice of motion to be served	within eight days after trial (London or Middlesex) (Ord. XXXIX. r. 4).
The notice of motion to be	a fourteen days' notice (*ib.*).
4. To Judge in Chambers from Master—	
By indorsement of summons by the master at the request of any party or by notice in writing to attend before the judge	within five days after the decision complained of (Ord. LIV. r. 21).
(Note.—Between service of notice of appeal and the day of hearing there must be at least one clear day (Ord. LIV. r. 21).)	

Appearance.

To writ of summons or originating summons. The time limited for appearance	eight days from service, inclusive of the day of such service, where defendant resides within the jurisdiction (R. S. C., App. A. Part I. No. 1; App. K. No. 1A); but in the case of a writ where the defendant is not within the jurisdiction the time for appearance is fixed by the order giving leave to serve the writ.
(Note.—A defendant may appear at any time before judgment although the time limited by the writ for appearance has expired (Ord. XII. r. 22).)	

To counterclaim. Appearance to a counterclaim is regulated by the same rules as to a writ of summons (Ord. XXI. r. 13), except that the eight days allowed are counted *exclusive* of the day of service (Ord. LXIV. r. 12; App. B. Part II. No. 2).

To third party notice. An appearance to a third party notice must be entered	within eight days from the service of the notice; after the said period an order is required (Ord. XVI. r. 49). The eight days here mentioned is not the same as that period in a writ of summons, but is exclusive of the day of service and inclusive of the last day (Ord. LXIV. r. 12).
To order to carry on proceedings. Every person served with an order to carry on proceedings who is not already a party to the cause or matter shall be bound to enter an appearance thereto	within the same time and in the same manner as if he had been served with a writ of summons (Ord. XVII. r. 5).

Appearance—*continued.*	
To notice of judgment or order.	Appearance to a notice of judgment or order is entered in the same manner and subject to the same provisions as a defendant entering an appearance (Ord. XVI. r. 41). See "Appearance to Writ of Summons," *supra*.
Notice of appearance must be given by defendant	on the day on which the appearance is entered (Ord. XII. r. 9).
Attachment of Debts.	
Order *nisi* must be served on the garnishee or his solicitor, and, unless otherwise ordered, on the judgment debtor or his solicitor	at least seven days before the hearing (Ord. XLV. r. 1, as amended by R. S. C., July, 1905).
Charging Order.	
If a judgment debtor is interested in any stock standing in the name of any company or in any stock or funds in Court standing in the name of the Paymaster-General, the Court or a judge, upon the *ex parte* application of the judgment creditor, may order the judgment debtor to show cause why the stock or funds shall not be charged without payment of the judgment debt and interest, and upon the making of the order the stock, &c. shall stand charged. Provided that no proceedings shall be taken to have the benefit of the charge	until after the expiration of six calendar months from the date of such order (Ord. XLVI. r. 2; and see 1 & 2 Vict. c. 110, ss. 14, 15; 3 & 4 Vict. c. 82, s. 1).
No transfer of any stock the subject of a charging order *nisi* shall be made	until the order is made absolute (Ord. XLVI. r. 3).
Committal Order.	
A committal order under the Debtors Act, 1869, bears date on the day on which such order was made and continues in force	for one year from such date (Ord. XLII. r. 25).
(NOTE.—A committal order may be renewed in the manner provided for writs of execution by Ord. XLII. r. 20. See Ord. XLII. r. 25.)	
Costs—Taxation.	
Notice of taxation. Where notice necessary, such notice to be	a one day's notice (Ord. LXV. r. 16).
Appointment to tax. Copy order and particulars to be left at the office of the proper taxing master	within seven days, or within time extended by taxing master (Ord. LXV. r. 19c).

Time table.

Costs—Taxation—*continued.*

Inspecting bill of costs. In a disputed taxation the party against whom the costs are claimed may inspect the bill without fee	within eight days after notice received of the bill having been brought in (Ord. LXV. r. 27, Reg. 34).
Tender of amount due. The party against whom costs are claimed may decide to dispute or agree to the claim, or may tender an amount in satisfaction	before the expiration of the eight days above allowed for inspection (Ord. LXV. r. 27, Reg. 34).

Discontinuance.

Without leave. The plaintiff may, by notice in writing, wholly discontinue his action against all or any of the defendants	at any time before receipt of defence, or after the receipt thereof, before taking any other proceeding (save any interlocutory application) in the action (Ord. XXVI. r. 1).
By leave. Save as above it shall not be competent for the plaintiff to discontinue the action without leave of the Court or a judge which may be granted	before, or at, or after the hearing or trial (*ib.*).

Discovery and Inspection.

1. Discovery by Interrogatories—

(a) Delivery. In any cause or matter interrogatories may by leave of the Court or a judge be delivered to the opposite party	(i) by the plaintiff at any time after delivering his statement of claim; (ii) by the defendant at or after the time of delivering his defence (Ord. XXXI. r. 1). These fixtures, however, are now subject to Ord. XXX. (Summons for Directions).
(Note.—Leave to deliver interrogatories is now necessary in all cases.)	
(b) Answer. Affidavit in answer to interrogatories to be filed	within ten days, or within such other time as a judge may allow (Ord. XXXI. r. 8).
(c) Striking out. An application to strike out interrogatories may be made	within seven days after service of the interrogatories (Ord. XXXI. r. 7).

2. Discovery by Affidavit of Documents—

Subject to order for directions affidavit to be filed	ten days from service (after defence, if any) of receipt for payment into Court. This time is not fixed by rule, but is the ordinary time in practice unless otherwise ordered.

3. Production and Inspection of Documents—

(a) Notice to produce. Either party to a cause or matter may *at any time* give notice to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for inspection (Ord. XXXI. r. 15).

Time table.

Discovery and Inspection—*continued.*

(b) Time for inspection. The party to whom such notice is given shall	(i) if all the documents referred to in such notice have been set forth in the affidavit of documents, within two days from the receipt of such notice; (ii) or if any of the documents referred to in such notice have not been set forth in the affidavit of documents, then within four days from the receipt of such notice deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which such documents as he does not object to produce may be inspected at the office of his solicitors, or, in the case of bankers' books or other account books in constant use, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground (Ord. XXXI. r. 17).

Distringas.

Effect of notice. Any person who claims to be interested in any stock standing in the books of a company may on affidavit filed in the Central Office give notice to the company that he is beneficially interested in such stock and the payment of dividends thereon. The company on which such notice is served shall not permit such stock to be transferred or dividends thereon paid	until after a day specified in a notice in writing served by the company on the person so claiming to be beneficially interested (Ord. XLVI. r. 8), but the company is not authorized to refuse to permit the transfer or withhold payment of dividends for more than eight days after the request to transfer, without order of the Court or a judge (Ord. XLVI. r. 10).

Evidence.

1. By Affidavit—

(a) Plaintiff's affidavits must be filed and a list thereof delivered to the defendant or his solicitor	within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a judge may allow (Ord. XXXVIII. r. 25).
(b) Defendant's affidavits must be filed and a list thereof delivered to the plaintiff or his solicitor	within fourteen days after the delivery of plaintiff's list, or within such time as the parties may agree upon, or the Court or a judge may allow (Ord. XXXVIII. r. 26).
(c) Affidavits in reply must be filed by the plaintiff and a list thereof delivered to the defendant or his solicitor	within seven days after the expiration of the fourteen days or such other time as may be allowed to the defendant for the delivery of his list (Ord. XXXVIII. r. 27).

Time table.

Evidence—*continued.*

(d) Cross-examination of deponent. Notice to produce deponent for cross-examination may be served	at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a judge may specially appoint (Ord. XXXVIII. r. 28).
2. READING EVIDENCE TAKEN IN OTHER MATTERS—	
(a) In *ex parte* applications evidence taken in another cause or matter may be read on *ex parte* applications by leave of the Court or a judge, to be obtained	at the time of making any such application (Ord. XXXVII. r. 3).
(b) in other cases the party desiring to use such evidence must give	two days' previous notice to the other parties of his intention to read such evidence (*ib.*).
4. EXAMINATIONS BEFORE EXAMINER OF THE COURT—	
(a) Appointment. Upon the production of an order for an examination indorsed with his name the examiner shall give an appointment in writing	specifying the place and time (within not more than seven days) at which, subject to any application from the parties, the examination shall be taken (Ord. XXXVII. r. 44).
(b) Notice of appointment. The party prosecuting such order shall give notice of the appointment to all parties	within twenty-four hours, or such shorter time (if any) as may be mentioned in the order (*ib.*).
5. EVIDENCE TAKEN BEFORE ISSUE JOINED—	
No affidavit or deposition filed or made before issue joined shall, without special leave of the Court or a judge, be received at the hearing or trial, unless notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf	within one month after issue joined or within such longer time as may be allowed by special leave of the Court or a judge (Ord. XXXVII. r. 24).
Execution.	
A writ of execution may issue without leave	at any time within six years from the recovery of the judgment, or the date of the order (Ord. XLII. r. 22).
,, ,, if unexecuted, shall remain in force	for one year from its issue (Ord. XLII. r. 20).
,, ,, if unexecuted may be renewed	at any time before its expiration, by leave of the Court or a judge for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ (Ord. XLII. r. 20).

Garnishee. See "Attachment of Debts."

Guardian *ad litem.*

Appointment in default— On default of appearance by defendant who is an infant or person of unsound mind, the plaintiff may apply for appointment of guardian *ad litem*, but no order shall be made on such an application unless notice thereof has been served on the infant or person of unsound mind in manner provided	after the expiration of time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application (Ord. XIII. r. 1).

Interrogatories. See "Discovery and Inspection."

Judgments

After trial. The judge shall direct judgment to be entered	at or after the trial (Ord. XXXVI. r. 39).
Motion for judgment. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, a motion for judgment may be set down—	
(a) by plaintiff	as soon as such issues or questions have been determined (Ord. XL. r. 7).
(b) by defendant	if the plaintiff does not set down such a motion and give notice thereof to the other parties within ten days after his right to do so has arisen, any defendant may set down a motion for judgment and give notice thereof to the other parties (Ord. XL. r. 7).
Setting aside. Any verdict or judgment obtained where one party does not appear at the trial may be set aside	upon an application made within six days after the trial (Ord. XXXVI. r. 33).
Application to discharge or vary judgment. See "Parties."	
Judgment in default. Judgment may in certain cases be entered on default of appearance and defence. See "Appearance," "Pleading."	

Motion, notice of (in K. B. and Ch. Divs.).

Service of notice of motion. By leave of the Court or a judge, to be obtained *ex parte*, notice of motion may be served	with the writ of summons or at any time after service of the writ of summons and before the time limited for appearance (Ord. LII. r. 9).

Time table.

For practice in Probate Division, see Chapter on "Motions."

Motion—*continued.*	
Length of notice of motion—	
(a) In ordinary cases	at least two clear days before the hearing, unless the Court or a judge give special leave to the contrary (Ord. LII. r. 5).
New Trial.	
Notice of motion to C. A. for new trial of an action tried *with* a jury must be served	within eight days after trial in London or Middlesex; trial elsewhere than in London or Middlesex within seven days after the last day of sitting on the circuits for England and Wales, during which the trial shall have taken place (Ord. XXXIX. r. 4), and must be a fourteen days' notice (*ib.*).
(NOTE.—A motion for new trial of an action tried *without* a jury is for purposes of time a motion of appeal within Ord. LVIII. r. 15; see "Appeals" 2 (c).)	
Order to carry on Proceedings. See "Parties."	
Parties.	
Notice of judgment or order, application to discharge or vary. Any person served with notice of judgment or order under Ord. XVI. r. 40, in any action for administration or for execution of trust, or for partition or sale of any hereditaments, may apply to the Court or a judge to discharge, vary, or add to the judgment or order,	within one month after such service (Ord. XVI. r. 40).
Order to carry on proceedings (Ord. XVII. r. 4). An application to discharge or vary an order under Ord. XVII. r. 4, may be made—	
(a) Where person served is under no disability other than coverture, or being under disability other than coverture, but having a guardian *ad litem*,	at any time within twelve days from the service of the order (Ord. XVII. r. 6).
(b) Where person served is under disability other than coverture, and having no guardian *ad litem*,	at any time within twelve days from the appointment of a guardian *ad litem* for such party. Until such period of twelve days shall have expired the order shall have no force or effect as against the person served (Ord. XVII. r. 7).
I.—Pleadings—Delivery.	
1. STATEMENT OF CLAIM—See exceptions in 4, *infra*.	
(a) Where writ specially indorsed. Where the writ is specially indorsed, under	when the writ is served (Ord. XX. r. 1 (a); *Anlaby* v. *Prætorius*, 20 Q. B. D. 764).

I.—Pleadings—Delivery—*continued.*	
Ord. III. r. 6, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim and delivered	
(b) Where writ not specially indorsed and defendant appears, no statement of claim may be delivered unless ordered by order for directions, or under Ord. XVIIIA. r. 3. When ordered, such statement of claim must be delivered	within the time fixed by the order, or, if no time fixed, then within twenty-one days from the date of such order (Ord. XX. r. 1 (c)).
(c) Where writ not specially indorsed and any defendant fails to appear and the claim is not within the terms of Ord. XIII. rr. 3—9, plaintiff is bound to deliver statement of claim by filing it in default	more than ten days before proceeding by motion for judgment under Ord. XXVII. r. 11 (*q. v.* and Ord. XIII. r. 12; Ord. XXI. r. 8).
2. Defence—See exceptions in 4, *infra*.	
(b) To writ not specially indorsed. Where the writ is not specially indorsed, a defendant must deliver his defence	within such time as may be fixed by the order for directions, or the order giving leave to deliver a statement of claim under Ord. XVIIIA. r. 3, or, if no time fixed, within ten days from receipt of the statement of claim (Ord. XXI. r. 8).
(d) After delivery of amended statement of claim	within original time for defence or within eight days from the delivery of the amendment, whichever shall be last (Ord. XXVIII. r. 5), or within time fixed by order for directions, if any.
(e) After delivery of particulars	the same length of time after delivery of particulars as defendant had at the return of the summons (Ord. XIX. r. 8).
3. Reply and Subsequent Pleadings—See exceptions in 4, *infra*.	
(a) Reply to defence or to defence and counterclaim	in Admiralty actions within six days, and in other actions, if ordered, within time specified in the order, or, if no time specified, within ten days after the defence or the last of the defences delivered (Ord. XXIII. r. 2).
(b) Reply to amended counterclaim	within the original time allowed for reply, or within eight days from the delivery of the amendment, whichever shall be last (Ord. XXVIII. r. 5).

Time table.

I.—Pleadings—Delivery—*continued.*

(c) Further reply. Where any ground of reply to set-off or counterclaim arises after reply delivered or after the time limited for delivering has expired, plaintiff may deliver a further reply	within eight days after such ground has arisen, or at any subsequent time by leave of the Court or a judge (Ord. XXIV. r. 2; but see Ord. XXIII. r. 1).
(d) Subsequent pleadings or joinder of issue must be delivered	within the time specified in the order giving leave, or, if none specified, then within four days after the delivery of the previous pleading (Ord. XXIII. r. 3).

4. Suspension of Time for Delivery of Pleadings—

(a) In causes intended to be tried during the autumn assizes at any place for which the commission day is fixed by Order in Council for a day prior to December 1st, and in Admiralty actions, summonses may be issued and pleadings may be amended, delivered or filed in the long vacation on and after the 1st October in any year, but shall not be issued, amended, delivered or filed during any other part of such vacation, unless by direction of the Court or a judge (Ord. LXIV. r. 4).

(b) Save as in the last preceding rule mentioned, the time of the long vacation in any year shall not be reckoned in the computation of the times appointed or allowed by the rules for amending, delivering or filing any pleading unless otherwise directed by the Court or a judge (Ord. LXIV. r. 5).

(c) Where order is made for security of costs, the time from the day when such order is served, until and including the day on which security is given, shall not be reckoned in the computation of time allowed to plead (Ord. LXIV. r. 6).

(d) When proceedings commenced under Ord. XIV., the time for delivery of defence is suspended from the issue of the summons to its dismissal, when time recommences to run (*Hobson* v. *Monks*, W. N. (84) 8).

(e) When particulars are applied for and ordered, the time from the return of the summons to the delivery of particulars does not count in the time allowed for delivery of the defendant's defence (Ord. XIX. r. 8).

II.—Pleadings—Amendment.—See I. 4, *supra*, "Suspension of Time."

1. Statement of Claim—

(a) Amendment. A plaintiff may, *without leave*, amend his statement, whether indorsed on the writ or not,	once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared; or, where defence is delivered but no order for reply is made, within ten days from delivery of the defence or the last of the defences (Ord. XXVIII. r. 2).

II.—Pleadings—Amendment—*continued.*	
(b) Disallowance of amendment under Ord. XXVIII. r. 2. A defendant may apply to have an amendment made under Ord. XXVIII. r. 2, or any part thereof disallowed	within eight days after the delivery of the amended statement of claim (Ord. XXVIII. r. 4).
2. Counterclaim or Set-off—	
(a) Amendment. A defendant, who has set up a counterclaim or pleaded a set-off, may, *without leave*, amend his counterclaim or set-off	at any time before the expiration of the time allowed him for answering the reply, and before such answer, or, in case there be no reply, then at any time before the expiration of twenty-eight days from the defence (Ord. XXVIII. r. 3).
(b) Disallowance of amendment. The plaintiff may apply to have an amendment made under Ord. XXVIII. r. 3, or any part thereof disallowed	within eight days after the delivery of the amended counterclaim or set-off (Ord. XXVIII. r. 3).
3. By Order—	
An amendment in pursuance of an order to be made	within the time limited by the order, or, if no time is thereby limited, then within fourteen days from the date of the order. Such order to amend shall on the expiration of such limited time as aforesaid become void, unless the time is extended (Ord. XXVIII. r. 7).
Summons.	
Originating Summons—	
Under Ord. LIV. r. 4F (no appearance required) must be served	two clear days before the return thereof (Ord. LIV. r. 4E). As to other originating proceedings, see "Appearance."
Ordinary summons—	
(a) Ordinary summons must be served	two clear days before the return thereof, unless otherwise ordered. Provided that a summons for time only may be served on the day previous to the return thereof (Ord. LIV. r. 4E). See note "Time Summonses," Ord. XXX. r. 1.
(b) Summons for judgment under Ord. XIV., see "Order XIV.," *supra*.	
Summons for directions—	
(a) In all actions commenced by writ (except in Admiralty and except where the writ is specially indorsed and in actions within Ord. XVIIIA.) plaintiff must issue a summons for directions	within fourteen days from entry of appearance and before taking any fresh step except application for injunction, or receiver, or the entering of judgment under Ord. XXVII. (Ord. XXX. rr. 1, 8).

Time table.

Summons—*continued.*

(b) If plaintiff fails to take out such summons, defendant may apply to dismiss	after the expiration of fourteen days from entry of appearance (Ord. XXX. r. 8).
(c) Summons for directions is returnable	not less than four days after service (Ord. XXX. r. 1 (a)).

Trial.

1. Notice of Trial—

(a) Notice of trial in ordinary actions may be given—	
(i) by plaintiff	with the reply (if any) whether it closes the pleadings or not, or (in other than Admiralty actions) where no order for a reply has been made under Ord. XXIII. r. 1, on the expiration of four days after defence, or the last of the defences shall have been delivered, or at any time after the issues of fact are ready for trial (Ord. XXXVI. r. 11).
(ii) by defendant	where the plaintiff does not give notice of trial within six weeks after the time when he first becomes entitled to do so as above stated, or within time extended by order, the defendant may give notice of trial (Ord. XXXVI. r. 12).
(b) In an action under Ord. XVIIIa. for trial without pleadings, notice of trial must be given by the plaintiff	within ten days after appearance (Ord. XVIIIa. r. 2).
(c) Avoidance of notice of trial. In London and Middlesex the notice of trial shall be no longer in force unless the trial shall be entered by one party or the other	within six days after notice of trial (Ord. XXXVI. r. 16).
(d) Length of notice of trial with pleadings	
(i) ordinary notice	ten days (Ord. XXXVI. r. 14).
(ii) short notice	four days (*ib.*).
(e) Length of notice of trial without pleadings	twenty-one days (Ord. XVIIIa. r. 2).

2. Entry of Action for Trial—

(a) In London or Middlesex	within six days after notice of trial (Ord. XXXVI. r. 16). If the party giving the notice of trial omits to enter the trial on the day or day after giving notice, the party to whom notice has been given may, unless the notice has been countermanded, within four days enter the trial (Ord. XXXVI. r. 20).

Time table.

Trial—*continued.*	
(b) Elsewhere than in London or Middlesex	after notice of trial has been given, at any time not less than seven days before the commission day (Ord. XXXVI. r. 22B).
3. With Jury—	
(a) By notice. In actions of slander, libel, false imprisonment, malicious prosecution, seduction or breach of promise of marriage, the parties may have the issues of fact tried by a judge with a jury by signifying their desire to that effect—	
(i) by plaintiff	in his notice of trial (Ord. XXXVI. r. 2).
(ii) by defendant	upon giving notice within four days from the time of the service of notice of trial (*ib.*).
(b) By order. In any cause or matter other than those above mentioned, an application for a trial with a jury may be made	within ten days after notice of trial has been given (Ord. XXXVI. r. 6).
4. With Special Jury—	
(a) By notice. Parties in any cause or matter in which they are entitled to a jury may have the issues tried by a special jury upon giving notice in writing to that effect—	
(i) by the plaintiff	at the time when he gives notice of trial (Ord. XXXVI. r. 7 (b)).
(ii) by the defendant	at any time after the close of the pleadings or settlement of the issues and before notice of trial, or if notice of trial has been given, then not less than six clear days before the day for which notice of trial has been given (Ord. XXXVI. r. 7 (c)).
(b) By order. An order for a special jury may be made	at any time (Ord. XXXVI. r. 7 (d)).
Third Party Notice to be served by defendant	within the time limited for delivering his defence (Ord. XVI. r. 48).
Writ of Summons.	
Original writ in force	twelve months from the day of the date thereof including the day of such date (Ord. VIII. r. 1).
Original writ in force to be served or renewed	within twelve months from the day of the date thereof, including the day of such date (Ord. VIII. r. 1).

Time table.

Writ of Summons—*continued.*

Renewed writ to be served or renewed	within six months from the date of the renewal, including the day of such date (Ord. VIII. r. 1).
Concurrent writ may be issued	at any time during twelve months after issue of original writ (Ord. VI. r. 1).
,, ,, to be served	within twelve months after issue of original writ (Ord. VI. r. 1).
,, ,, in force	for the period during which the original writ is in force (Ord. VI. r. 1).
Indorsement of date of service to be made	within three days after such service (Ord. IX. r. 15).

Time for entering Appearance after Service out of the Jurisdiction of Writ, or Notice of Writ.

As a general rule the time limited for appearance to a writ, or notice of a writ, served out of the jurisdiction, is calculated on the basis of allowing time after service for not less than two posts between England and the place where service is to be effected, *plus* at least eight days.

The ordinary form of order allowing service in any city or place abroad, contains the additional words "or elsewhere in the [kingdom, or republic, *or as may be*] of ." As a rule, therefore, the time limited by the order is calculated so as to allow the time estimated as above stated to allow for postage to and from such part of the foreign country or colony as the defendant is believed to be.

A party, however, who takes an order for service abroad, may, if he so desires it, have the time fixed for a particular city or town only; *e.g.*, the time for Paris only would be 10 days, while for "Paris, or elsewhere in the Republic of France," it would be 12 days. But in every case service would have to be effected strictly in accordance with the terms of the order.

The following is a Table of Times for appearance calculated as above described, but must be taken as variable according to the discretion vested in the officer of the Court who draws up the order, subject to the special direction of the judge, to insert such increased time as the circumstances of any particular case appear to require.

In this Table where a particular town is named, the time allowance is for that town only, and if the order is also for service elsewhere in the country of that town, the time should be taken from that given for the *country*.

ORDER XI. RULES 4 AND 5.

Table of Time usually Limited for Entering Appearance after Service out of the Jurisdiction of Writ or Notice of Writ.

Postal Table of Time occupied.		Name of Place.	Days for appearance.	Postal Table of Time occupied.		Name of Place.	Days for appearance.
Days	Hrs.			Days	Hrs.		
11	—	Aden	30	32	—	Batavia	72
		Africa:		1	6	Bayonne	12
4	—	North Coast	16	—	—	Belgium	12
17	—	West Coast	42	18	—	Belize (British Honduras) *viâ* New Orleans	46
—	—	Algiers	20				
—	15	Amsterdam	10	1	2	Berlin	12
15	—	Antigua	38	15	—	Bermuda, *viâ* Halifax	38
—	11	Antwerp	10	1	8	Berne	12
29	—	Argentine Republic	66	9	—	Beyrout	26
28	—	Ascension	64	18	—	Bombay	44
5	—	Athens	20	—	22	Bordeaux	10
39	—	Auckland (New Zealand), *viâ* San Francisco	88	—	—	Borneo (North)	90
				1	2	Bremen	12
—	—	Australia	100	2	18	Brindisi	14
16	—	Bahamas	40	45	—	Brisbane	98
18	—	Bahia	44	23	—	British Columbia	54
1	—	Bâle	10	14	12	British Guiana	38
13	—	Barbadoes	34	—	10	Brussels	10
1	18	Barcelona	14	2	—	Buda Pesth	12

Postal Table of Time occupied.		Name of Place.	Days for appearance.	Postal Table of Time occupied.		Name of Place.	Days for appearance.
Days	Hrs.			Days	Hrs.		
20	—	Buenos Ayres	66	—	14	Guernsey	12
21	—	Bushire (Persian Gulf)	50	—	16	Hague, The	10
29	—	Busreh (Persian Gulf)	66	1	8	Hamburg	12
3	12	Cadiz	16	16	—	Havana	40
6	—	Cairo	20	—	—	Holland	12
21	—	Calcutta	50	37	—	Hong Kong	90
41	—	Caldera, *viâ* Panama	90	24	—	Honolulu	56
32	—	Callao ,,	72	10	—	Iceland	30
35	—	Cameroons (Africa)	78	—	—	India	90
—	—	Canada (Eastern)	40	35	—	Inhambane (Africa)	78
24	—	Cape Coast Castle	56	1	10	Interlaken	12
—	—	Cape Colony	70	38	—	Iquique, *viâ* Panama	84
21	—	Cape Town	50	—	—	Ireland	12
24	—	Carthagena (Colombia)	56	—	—	Isle of Man	10
—	—	Ceylon	50	—	—	Italy	16
—	—	Channel Islands	12	18	—	Jamaica	45
2	—	Christiania	14	12	—	Jeddah (Arabia)	32
40	—	Cobija	88	—	14	Jersey	12
—	15	Cologne	10	33	—	King George's Sound	74
20	—	Colombo (Ceylon)	48	21	—	Kurrachee	50
21	—	Colon	50	31	—	Lagos (Africa)	70
43	—	Congo (Africa)	94	23	—	La Guayra	54
5	—	Constantinople, *viâ* Varna	24	3	23	Lisbon	20
8	—	,, *viâ* Brindisi		47	—	Loanda (Africa)	102
2	—	Copenhagen	14	1	12	Lucerne	12
42	—	Coquimbo, *viâ* Magellan	92	—	22	Lyons	10
8	—	Cyprus	30	5	—	Madeira	20
36	—	Delagoa Bay	80	20	—	Madras	48
14	12	Demerara	38	2	—	Madrid	14
—	—	Denmark	18	3	12	Malaga	16
14	8	Dominica	38	4	12	Malta	20
1	12	Dresden	12	—	—	Man (Isle of)	10
—	—	Egypt	30	1	6	Marseilles	12
35	—	Falkland Islands	78	14	—	Martinique	36
36	—	Fernando Po	80	20	—	Mauritius	48
44	—	Fiji	100	40	—	Melbourne	88
2	—	Florence	14	1	12	Milan	14
—	—	France	12	35	—	Mollendo, *viâ* Panama	78
1	8	Frankfort-on-Maine	12	19	—	Monrovia (Africa)	46
38	—	Gaboon (Africa)	84	26	—	Monte Video	60
1	4	Geneva	12	15	—	Montserrat (W. Indies)	38
1	17	Genoa	12	3	12	Moscow	18
—	—	Germany	14	27	—	Moulmein	62
4	—	Gibraltar	18	26	—	Mozambique, *viâ* Brindisi	60
3	—	Gothenburg	14	1	16	Munich	14
14	—	Goree (Africa)	36	24	—	Muscat	56
10	—	Grand Canary	28	2	20	Naples	16
—	—	Greece	20	26	—	Natal	70
14	—	Grenada	36	8	—	Newfoundland	30
24	—	Grey Town	56	10	—	New York	28
14	15	Guadaloupe	38	—	—	New Zealand	100
26	—	Guayaquil, *viâ* Panama	60	1	13	Nice	14

Postal Table of Time occupied.		Name of Place.	Days for appearance.
Days	Hrs.		
—	—	Norway	18
9	—	Nova Scotia (Halifax)	26
1	8	Nuremberg	12
3	20	Odessa	18
38	—	Old Calabar (Africa)	84
4	—	Oporto	16
22	—	Panama	52
—	10	Paris	10
28	—	Payta, *viâ* Panama	64
—	—	Pekin	142
26	—	Penang	60
16	—	Pernambuco	40
36	—	Perth (W. Australia)	80
20	—	Point de Galle	48
16	—	Port au Prince	40
50	—	Port Darwin	108
15	—	Porto Rico (San Juan)	38
—	—	Portugal	20
25	—	Puerto Cabello	58
33	—	Punta Arenas (Magellan)	74
10	—	Quebec	28
29	—	Quillimane (Africa)	66
25	—	Rangoon	58
2	15	Riga	16
28	—	Réunion	64
21	—	Rio de Janeiro	50
2	18	Rome	16
—	13	Rotterdam	10
—	—	Russia	20
34	—	Saïgon (Cochin China)	76
18	—	St. Helena	50
15	23	St. Kitts	40
13	13	St. Lucia	36
1	2	St. Nazaire (France)	12
3	—	St. Petersburg	16
16	12	St. Thomas	42
10	—	St. Vincent	28
13	12	St. Vincent (W. Indies)	36
53	—	Samoa	114
16	—	San Francisco	40
27	—	Santa Martha (Colombia)	62
2	12	Santander	14
25	—	Santos (Brazil)	58
24	—	Savanilla	56
—	—	Scotland (mainland)	12
—	—	,, (islands)	14
18	—	Senegal	44
23	—	Seychelles	54
42	—	Shanghai	92
17	—	Sierra Leone	50
28	—	Singapore	80
—	—	Spain	18
3	10	Stockholm	16
1	—	Strassburg	10
1	6	Stuttgart	12
6	12	Suez	22
—	—	Sweden	18
—	—	Switzerland	14
43	—	Sydney	94
9	—	Teneriffe	26
10	—	Tiflis (Caucasus)	28
—	—	Transvaal	80
3	—	Trieste	16
14	13	Trinidad	38
1	10	Turin	12
—	—	United States (Eastern States)	40
—	—	United States (Western States)	50
39	—	Valparaiso, *viâ* Magellan	94
43	—	,, *viâ* Panama	
2	4	Venice	14
25	—	Vera Cruz	58
1	20	Vienna	14
3	—	Vigo	14
42	—	Wellington (New Zealand), *viâ* San Francisco	94
—	—	West India Islands	45
43	—	Yokohama	94
21	—	Zanzibar	50
1	6	Zurich	12

CHAPTER XVI.

COSTS.

Ord. LXV. r. 1. Costs. Costs to be in the discretion of the Court.

By Ord. LXV. r. 1, "Subject to the provisions of the Acts and these rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge: Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the Chancery Division: Provided also, that where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, cause, matter, or issue is tried, or the Court, shall, for good cause, otherwise order."

Probate Costs.—The plaintiff's costs of an unsuccessful action impeaching the validity of a will, though ordered by the judge of the Probate Division to be paid out of the testator's estate, are not testamentary expenses. (*Re Prince*, (1898) 2 Ch. 225.) Costs of probate action by legatees against executrix ordered to be paid by plaintiffs were allowed to be deducted by the defendant executrix from the plaintiffs' legacies in priority to incumbrances created by them pending the probate action. (*Re Knapman*, 18 C. D. 300.)

In a probate action, where a plea of undue influence is not established, the Court may in its discretion order the costs to be paid out of the estate if the circumstances are such that reasonable grounds for suspicion were raised (*Davies* v. *Gregory* (1873), L. R. 3 P. & D. 28; 42 L. J. P. 33; 28 L. T. 239), or if there were no reasonable grounds for suspicion, may leave the costs to follow the event. (*Black* v. *Cleland*, 12 Times Rep. 63. See Annual Practice, 1906, p. 888.)

It must be remembered that, by Rule 41 of the Probate Court Rules, 1862, "*In all cases the party opposing a will may, with his plea, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Prerogative Court.*"

Probate Rules. Rule 41, C. B. Notice to cross-examine only.

And that this rule has been perpetuated by Ord. XXI. r. 18.

Ord. XXI. r. 18. Notice in probate actions.

Probate Action.—The effect of the amended r. 18 of Ord. XXI. is that, whether he has asked for a jury or not, a defendant who has given notice under the rule is not liable to pay the costs of the other side, unless the judge shall be of opinion that there was no reasonable ground for opposing the will. (*Davies* v. *Jones*, (1899) P. 161; 68 L. J. P. 69. See also *ante*, p. 411, for the practice under this rule, and the Annual Practice, 1906, p. 269.)

These rules are binding on County Court judges in all probate actions that may come before them (*a*).

The cases bearing on these rules will be found in Part I., pp. 211—221.

By Rule 2, "When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event. [And an order giving a party costs, except so far as they have been occasioned or incurred by or relate to some particular issue or part of his proceedings, shall be read and construed as excluding only the amount by which the costs have been increased by such issue or proceedings; but the Court or judge, if the whole costs of the action are not intended to be given to the party, may, wherever practicable, by the order direct taxation of the whole costs and payment of such proportion thereof as the Court or judge shall determine.]"

Ord. LXV. r. 2. Costs of issues to follow event.

(*a*) *Leigh* v. *Green*, (1892) P. 17; 61 L. J. P. 66.

R. 3.

By Rule 3, "If a cause be removed from an inferior Court having jurisdiction in the cause, the costs in the Court below shall be costs in the cause."

R. 5. Personal liability of solicitor to pay costs.

By Rule 5, "Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or judge shall think fit to award."

R. 6. Security for costs.

By Rule 6, "In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times or in such manner and form, as a Court or judge shall direct."

For the practice under this rule, see Annual Practice, 1906, pp. 902—907.

R. 6A. Security for costs by plaintiff temporarily within jurisdiction.

By Rule 6A, "A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction."

R. 7. Bond as security for costs.

By Rule 7, "Where a bond is to be given as security for costs, it shall, unless the Court or a judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court."

R. 11. Costs may be disallowed to or ordered to be paid by solicitor on account of delay or misconduct.

By Rule 11, "If in any case it shall appear to the Court or a judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the

solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report; and direct the solicitor in the first place to show cause before such taxing officer, and may also, if they or he think fit, direct or authorize the official solicitor of the Supreme Court to attend and take part in such inquiry. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or judge may direct. Any costs of the official solicitor shall be paid by such parties, or out of such funds as the Court or a judge may direct; or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by Parliament."

R. 13. Costs of solicitor guardian *ad litem*.

By Rule 13, "Where the Court or a judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require" (*b*).

Costs in probate actions ordered to be paid out of the estate.

By Rule 14D, "In any probate action in which it is ordered that any costs shall be paid out of the estate, the judge making such order may direct out of what portion or portions of the estate such costs shall be paid, and such costs shall be paid accordingly."

In *Dean* v. *Bulmer*, (1905) P. 1; 74 L. J. P. 12; 92 L. T. 426, the Court ordered the costs of both plaintiffs and defendants to be charged on the corpus of real estate settled by the will.

(*b*) See *White* v. *Duvernay*, where costs were ordered to be provided for by plaintiff: (1891) P. 290; 60 L. J. P. 89.

R. 16. Notice of taxing costs and copy bill.

By Rule 16, "One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary."

R. 17. Where such notice unnecessary.

By Rule 17, "Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian."

R. 19. Taxing masters to assist each other.

By Rule 19, "The taxing masters shall be respectively assistant to each other; and in the discharge of their duties, and, for the better despatch of the business of their respective offices, any taxing master may tax or assist in the taxation of a bill of costs which has been referred to any other taxing master for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly."

R. 19B. Date of perfecting order to be certified.

By Rule 19B, "The proper officer (*c*) by whom any order directing a taxation of costs shall be drawn up shall certify upon the order the date on which it was signed, entered, or otherwise perfected."

R. 19C. Copy of order and statement of names of parties to be left at taxing office by party having carriage of order.

By Rule 19C, "The solicitor having the carriage of the order shall leave at the office of the proper taxing officer within seven days (or such further time as the taxing officer may allow for reasons to be certified by him) after the order was signed, entered, or otherwise perfected, a copy of it and (annexed to such copy) a statement containing the names and addresses of the parties appearing in person, and of the solicitors of the parties not appearing in person; and in case of default no costs of drawing and copying the will, nor of attending the taxation, shall be allowed to the solicitor so failing."

R. 19D. Notice of time for leaving bills of costs to be given

By Rule 19D, "On the copy of the order being left with the taxing officer, he shall forthwith send by post to the parties appearing in person, and to the solicitors of the

(*c*) The proper officer for taxing bills of costs in the Probate Division is one of the registrars.

parties not appearing in person, a notice fixing a date before which the bills, the taxation whereof is directed by the order, shall (with all necessary papers and vouchers) be left for taxation, and a subsequent date on which the taxation shall be proceeded with." by taxing master.

By Rule 19E, "The taxation shall, if possible, be continued without interruption till completed, but if adjourned for any reason, notice of the adjournment shall be sent by the taxing master by post to any solicitor not present at the time of the adjournment, whose attendance he may require at the next appointment." R. 19E. Notice of adjournment of taxation.

By Rule 19G, "Any solicitor who shall fail to leave his bill of costs (with the necessary papers and vouchers) within the time or extended time fixed by the taxing master for that purpose, or who shall in any way delay or impede the taxation shall, unless the taxing master otherwise directs, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation, and the taxing master may also, if he shall think fit, exercise all or any of the powers vested in him by Regulations 28 and 55 of this order." R. 19G. Powers of taxing officer where solicitor neglects to leave bill of costs within time fixed, or impedes or delays taxation.

By Rule 19H, "In every bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation." R. 19H. Forms of bills of costs.

By Rule 21, "When any book, paper, or document shall be transmitted from the chambers of a judge to the office of a taxing master, a memorandum of such transmission shall be made and signed by the taxing master or the clerk of the taxing master, at whose request such book, paper, or document may be transmitted, and shall be delivered to the chief clerk of such judge; and when any such book, paper, or document shall be returned from the office of the taxing master to the judge's chambers, a memorandum of such return shall be made and signed by such chief clerk. or by one of his clerks, and shall be delivered to the taxing master." R. 21. Memorandum of transmission.

R. 23. Gross sum for costs on interlocutory applications.

By Rule 23, "In any case, where the Court or a judge shall think fit to award costs to any party, the Court or judge may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid."

By Rule 26A, "Orders for delivery of bills of costs by solicitors and for taxation of such bills may be made by the Court or a judge in any Division of the High Court, notwithstanding that such bills relate to non-contentious proceedings."

R. 27. Special allowances and general regulations.

By Rule 27, "The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court of Judicature:—

For the practice under rr. 26A and 27, see Annual Practice, 1906, pp. 923—956.

Reg. 1. Allowances for pleadings, &c. in discretion of taxing master.

"1. As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits and admissions under Ord. XXXII. r. 4, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, and attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

Reg. 2. Drawing pleadings.

"2. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Reg. 3. Instructions to sue or defend, &c.

"3. As to instructions to sue or defend, or the preparation of briefs, if the taxing officer shall on special grounds consider the fee in either scale provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

Reg. 4. Swearing affidavits.

"4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an

agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

"5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over. Reg. 5. Drawing affidavits and attending deponent.

"6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service. Reg. 6. Delivery of pleadings, &c.

"7. As to perusals, the fees are not to apply where the same solicitor is for both parties. Reg. 7. Perusals.

"8. Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed. Reg. 8. Separate answers or proceedings by the same solicitor.

"9. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed. Reg. 9. Evidence.

"10. As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper." Reg. 10. Agency correspondence.

"12. As to attendances at the judges' chambers, where, from the length of the attendance, or from the difficulty of the case, the judge or master shall think the highest of the fees an insufficient remuneration for the services performed, Reg. 12. Special allowance for attendances at chambers in cases of difficulty, &c.

or where the preparation of the case or matter to lay it before the judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the judge or master may allow such fee, in lieu of the fee of 1*l.* 1*s.* provided, not exceeding 2*l.* 2*s.*, or where the higher scale is applicable, 3*l.* 3*s.*, or in proceedings to wind up a company, 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the judge to deserve higher remuneration than the ordinary fees, the judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the fees of 2*l.* 2*s.*, 3*l.* 3*s.*, and 5*l.* 5*s.*

Reg. 13. Non-attendance or neglect of parties on proceedings in chambers.

"13. As to attendances at the judges' chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Reg. 14. Folio to be 72 words.

"14. A folio is to comprise seventy-two words, every figure comprised in a column, or authorised to be used, being counted as one word.

Reg. 15. Fees to counsel for settling pleadings,

"15. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think

just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

affidavits, &c., and advising thereon.

"16. As to counsel attending at judges' chambers, no costs thereof shall in any case be allowed, unless the judge certifies it to be a proper case for counsel to attend."

Reg. 16. Counsel at chambers.

This rule must now be read in conjunction with Ord. LV. r. 1A, which prescribes "that in any proceeding before a judge in chambers, any party may, if he so desire, be represented by counsel."

"17. (a) As to inspection of documents under Ord. XXXI. r. 15, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

Reg. 17. Inspection of documents under O. 31, r. 15.

"(b) The taxing officers of the Supreme Court or of any division thereof shall have power and authority to make one or more interim certificate or certificates, allocatur or allocaturs, in any taxation for any portion or portions of the taxed costs directed to be taxed, without waiting until a certificate for the full amount can be made.

Power to make an interim certificate.

"18. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof."

Reg. 18. Copies of documents, allowance of 4*d.* per folio, except where solicitor refuses production.

Reg. 20. Disallowance of costs of improper, vexatious, or unnecessary matter in documents or proceedings.

"20. The Court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so: and in the Queen's Bench Division the master shall make such order as may be required to effect the object of this regulation.

Reg. 21. Set-off of costs.

"21. In any case in which, under the last preceding regulation, or any other rule of Court, or by the order or direction of a Court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid

or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered."

Reg. 23. Unnecessary appearance in Court or at chambers.

"23. Where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or judge shall expressly direct such costs to be allowed.

Reg. 24. Costs of applications to extend time.

"24. The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing officer, unless the Court or judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent, to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs, in the manner provided by Regulation 21.

Reg. 25. Powers of taxing officers.

"25. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been, or are by general orders directed to be, performed by any of the masters, taxing masters, registrars, or other officers of any

of the Courts whose jurisdiction is by the principal Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the principal Act were, or by general orders are, vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a judge.

Reg. 26. Taxing master to assist when account comprises bill of costs.

"26. Where an account consists in part of any bill of costs, the Court or judge may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the Court or judge by whose direction the same were taxed.

Reg. 27. Attendance of parties on taxation.

"27. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary."

The right to attend on taxation depends solely on the interest of the party in the fund out of which the costs are to be paid, and is independent of the position of plaintiff and defendant.

Executors and trustees are not allowed to attend the taxation of costs of other parties where all the parties interested are before the Court, but executors are entitled to attend until their funds are ascertained to be free from debts.

The Court will not interfere with a master's discretion on these points. (*Stahlschmidt* v. *Lett*, 9 W. R. 830.)

"28. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. Reg. 28. Refusal or neglect to procure taxation.

"29. On every taxation the taxing master shall allow all such costs, charges, and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence, or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses. Reg. 29. Costs to be allowed on taxation.

"30. As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed. Reg. 30. Fees not here provided for.

"31. Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment. Reg. 31. Costs of amendment of plaintiff's pleadings.

"32. Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned Reg. 32. Plaintiff refused costs of his amendments.

by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

Reg. 33. Taxation, where action, &c. dismissed with costs.

"33. Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs.

Reg. 34. Taxation of costs where parties differ.

"34. Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

Reg. 35. Where total of costs taxed to be stated.

"35. Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

Reg. 36. Fees of conveyancing counsel of the Court, accountants, &c.

"36. The allowances in respect of fees to the conveyancing counsel of the Court, and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by

the taxing officers, subject to appeal to the Court or judge, whose decision shall be final.

"37. The rules, orders, and practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the principal Act, shall, in so far as they are not inconsistent with the principal Act and these rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal. [But the taxing masters shall have power to revise and regulate the practice in regard to taxation of costs, and to the allowance of fees so as to assimilate the allowances for costs, and to secure uniformity upon all taxations so far as may be practicable and expedient.] Reg. 37. Application of former practice.

"38. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances: and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment. Reg. 38. Considerations by which taxing officer's discretion must be influenced.

"38A. If upon any taxation it shall appear that the costs have been increased by unnecessary delay or by improper, vexatious, prolix or unnecessary proceedings, or by other misconduct or negligence, or that from any other cause the amount of the costs is excessive having regard to the nature of the business transacted or the interests Reg. 38A. Power to taxing officer to assess costs at a gross sum.

involved or the money or value of property to which the costs relate, or to the other circumstances of the case, the taxing master shall allow only such an amount of costs as may be reasonable and proper, and may assess the same at a gross sum, and shall (if necessary) apportion the amount among the parties if more than one. The provisions as to the review of taxations shall apply to allowances and certificates under this rule.

Reg. 38B. Disallowances where bill reduced by a sixth.

"38B. If on the taxation of a bill of costs payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, the amount of the professional charges contained in the bill is reduced by a sixth part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation.

Reg. 39. Objections to taxation. Review.

"39. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, or such earlier time as may in any case be fixed by the taxing master, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same. The taxing master may, if he shall think fit, issue, pending the consideration of such objections, a certificate of taxation or allocatur for or on account of the remainder of the bill of costs, and such further certificate or allocatur as may be necessary shall be issued by the taxing master after his decision upon such objections.

Reg. 40. Review of taxation by taxing officer.

"40. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he

shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

"41. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may within fourteen days from the date of the certificate or allocatur, or such other time as the Court or a judge, or taxing officer, at the time he signs his certificate or allocatur, may allow, apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as the judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid. Reg. 41. Review of taxing master's certificate by judge.

"42. Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct." Reg. 42. Evidence on reviewal.

"44. No retaining fee to counsel shall be allowed on taxation as between party and party. Reg. 44. Retaining fee to counsel.

"45. Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper." Reg. 45. Fees for conferences.

"47. Where the costs of retaining two counsel may properly be allowed, such allowance may be made although both such counsel may have been selected from the outer bar. Reg. 47. Two counsel.

"48. As to refresher fees, when any cause or matter is to be tried or heard upon *viva voce* evidence in open Court, Reg. 48. Refresher fees.

if the trial shall extend over more than one day, and shall occupy either on the first day only, or partly on the first and partly on a subsequent day or days, more than five hours, without being concluded, the taxing officer may allow, for every clear day subsequent to that on which the five hours shall have expired, the following fees :—

To the leading counsel	from	5	to 10	guineas
To the second, if three counsel	,,	3	to 7	,,
To the third, if three counsel, or the second, if only two	,,	3	to 5	,, (*d*).

"The like allowances may be made where the evidence in chief is not taken *vivâ voce*, if the trial on hearing shall be substantially prolonged beyond such period of five hours, to be so computed as aforesaid, by the cross-examination of witnesses whose affidavits or depositions have been used.

Solicitor and client.

"Provided that in the taxation of costs between solicitor and client the taxing officer shall be at liberty to allow larger fees, under special circumstances to be stated by him.

Under Reg. 29 (*ante*), the taxing master has now a discretion to allow, in a proper case, refresher fees exceeding the maxima fixed by this regulation. (*Stewart* v. *Weber* (1903), 89 L. T. 559; *Cavendish* v. *Strutt*, (1904) 1 Ch. 524; 73 L. J. Ch. 247; 90 L. T. 500.)

Reg. 49. Premature delivery of briefs.

"49. Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred.

Reg. 50. Defendant's costs, where trial comes on but action cannot be tried.

"50. Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same

(*d*) See *The Courier*, (1891) P. 355, dissenting from *Walker* v. *Crystal Palace*, (1891) 2 Q. B. 300; and *O'Hara* v. *Elliott*, (1893) 1 Q. B. 362; 62 L. J. Q. B. 317; 68 L. T. 166.

cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.

"51. The following fees are to be allowed to counsel's clerks :— Reg. 51. Counsel's clerks' fees.

	£	s.	d.
Upon a fee under 5 guineas	0	2	6
5 guineas and under 10 guineas	0	5	0
10 guineas and under 20 guineas	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas	1	0	0
50 guineas and upwards—per cent.	2	10	0
On consultations, senior's clerk	0	5	0
On consultations, junior's clerk	0	2	6
On conferences	0	5	0
On retainers (where allowed) :			
General retainer	0	10	6
Common retainer	0	2	6

"52. No fee to counsel shall be allowed on taxation unless vouched by *his signature* (*e*). Reg. 52. Vouchers for counsel's fees.

"53. In cases in which an original affidavit can be used, and to which Ord. XXXVIII. rule 15, applies, it shall not be necessary to take an office copy. Reg. 53. Office copy affidavit.

"54. It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it, may be used as against such party. Reg. 54. Office copy affidavit of discovery of documents.

"55. Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under regulation 21. Reg. 55. Delay before taxing master.

"56. Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he Reg. 56. Delivery of bill to client, where costs to be paid out of a fund.

(*e*) Initials are not sufficient. No receipt stamp is necessary.

shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address, for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

Reg. 57. Power of taxing officer to limit or extend time.

"57. The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose.

Reg. 58. Endorsement on bill of costs.

"58. Every bill of costs which shall be left for taxation shall be endorsed with the name and address of the solicitor, if any, for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed."

Probate Rules, C. B.

The following are the Probate Court Rules (Contentious Business) relating to costs which are still in force so far as they are not inconsistent with the rules and orders of the Supreme Court :—

R. 92, C. B. Taxing bills of costs.

Rule 92. "All bills of costs in contentious business are referred to the registrars of the principal registry for taxation, and may be taxed by them without any special order for that purpose. Such bills are (unless by leave of the judge or a registrar) to be filed in the registry two

days at least before the day appointed for the taxation. An appointment for taxation will be made at the time of filing the bill."

The present practice is to file the bills in the Contentious Department, and the appointment for taxation is sent by post.

Rule 93. "The party who has obtained an appointment to tax his bill of costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at the same time deliver to him or them a copy of the bill to be taxed." R. 93, C. B.

Rule 94. "When an appointment has been made by a registrar of the principal registry for taxing any bill of costs, and any of the parties to be heard on the taxation do not attend at the time appointed, the registrar may nevertheless proceed to tax the bill, after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed." R. 94, C. B.

Rule 95. "If more than one-sixth is deducted from any bill of costs taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill." R. 95, C. B.

Rule 128. "In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the proctor, solicitor, or attorney of the party to whom such costs are to be paid may forthwith file his bill of costs in the registry, and obtain an appointment for the taxation, provided that such taxation shall not take place before the time allowed for moving for a new trial or re-hearing shall have expired; or, in case a rule *nisi* should have been granted, until the rule is disposed of, unless the judge shall, for cause shown, direct a more speedy taxation." R. 128, C. B.

Rule 129. "Application for a review of taxation is to be made to the judge on summons." R. 129, C. B. Review of taxation.

R. 130, C. B. Recovery of costs.

Rule 130. "Upon the registrar's certificate of costs being signed he shall at once issue an order of the Court for payment of the amount within seven days, unless a summons be taken out for a review of the taxation, in which case the order for payment shall be suspended until the summons is disposed of."

R. 131, C. B.

Rule 131. "This order shall be served on the proctor, solicitor, or attorney of the party liable [or if it is desired to enforce the order by committal on the party himself], and if the costs be not paid within the seven days a writ of *fieri facias* or writ of sequestration or a writ of *elegit* shall be issued as of course in the registry, upon an affidavit of service of the order and non-payment."

Costs in discretion of judge.

The question of costs has always been in the discretion of the judge, both in the Prerogative Court and in the Probate Court.

Enforcing Payment of Costs.—The same rules apply in the Probate Division as in the other divisions of the High Court, and an order for costs can be enforced by the issue of writs of *fi. fa.* and elegit. (See Ord. XLII. rr. 17—19.) As to the issue of a writ of sequestration, see Ord. XLIII. r. 7. See also *ante*, p. 458.

Receiver by way of equitable execution.

Application may be made to the judge on summons for an appointment of a receiver by way of equitable execution to enforce payment of costs. See Ord. L. rr. 15a and 16, for the practice for receivers.

Bills of costs are taxed in non-contentious business as well as in contentious. See Non-Contentious Rules 88 to 91.

Liability of married woman intervening.

As to the liability of a married woman to pay costs where she has obtained leave to intervene in a probate action under Ord. XII. r. 23, see *Crickitt* v. *Crickitt*, (1902) P. 177; 71 L. J. P. 65; 86 L. T. 635.

APPENDIX.

WILLS ACT, 1837.

(1 Vict. c. 26.)

An Act for the Amendment of the Laws with respect to Wills. [3rd July, 1837.] 1 Vict. c. 26.

Be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries, and Tenures *in capite* and by Knights Service and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof," or by virtue of an act passed in the parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries and Tenures *in capite* and by Knights Service," and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular Number;

Meaning of certain words in this act.

"Will;"

12 Car. 2, c. 24.

14 & 15 Car. 2 (I.).

"Real estate;"

"Personal estate;"

1 Vict. c. 26. Gender.

number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Repeal of the Statutes of Wills, 32 H. 8. c. 1, and 34 & 35 H. 8, c. 5.

2. And be it further enacted, that an act passed in the thirty-second year of the reign of King Henry the Eighth, intituled "The Act of Wills, Wards, and Primer Seisins, whereby a Man may devise Two Parts of his Land;" and also an act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled "The Bill concerning the Explanation of Wills;" and also an act passed in the parliament of Ireland in the tenth year of the reign of King Charles the First, intituled "An Act how Lands, Tenements, &c. may be disposed by Will or otherwise, and concerning Wards and Primer Seisins;" and also so much of an act passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for Prevention of Frauds and Perjuries," and of an act passed in the parliament of Ireland in the seventh year of the reign of King William the Third, intituled "An Act for Prevention of Frauds and Perjuries," as relates to devises or bequests of lands or tenements or to the revocation or alteration of any devise in writing of any lands, tenements, or hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate, being assets, or to nuncupative wills, or to the repeal, altering, or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise or bequest therein; and also so much of an act passed in the fourth and fifth years of the reign of Queen Anne, intituled "An Act for the Amendment of the Law and the better Advancement of Justice," and of an act passed in the parliament of Ireland in the sixth year of the reign of Queen Anne, intituled "An Act for the Amendment of the Law and the better Advancement of Justice" as relates to witnesses to nuncupative wills; and also so much of an act passed in the fourteenth year of the reign of King George the Second, intituled "An Act to amend the Law concerning Common Recoveries, and to explain and amend an act made in the Twenty-ninth year of the reign of King Charles the Second, intituled 'An Act for Prevention of Frauds and Perjuries,'" as relates to estates *pur autre vie;* and also an act passed in the twenty-fifth year of the reign of King George the Second, intituled "An Act for avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates in that part of Great Britain called England, and in his Majesty's Colonies and Plantations in America," except so far as relates to his Majesty's colonies and plantations in America; and also an

10 Car. 1, sess. 2, c. 2 (I.).

Sects. 5, 6, 12, 19, 20, 21 and 22 of the Statute of Frauds, 29 Car. 2, c. 3; 7 W. 3, c. 12 (I.).

Sect. 14 of 4 & 5 Anne, c. 16.

6 Anne, c. 10 (I.).

Sect. 9 of 14 G. 2, c. 20.

25 G. 2, c. 6 (except as to colonies).

act passed in the parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled "An Act for the avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates;" and also an act passed in the fifty-fifth year of the reign of King George the Third intituled, "An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will," shall be and the same are hereby repealed, except so far as the same acts or any of them respectively relate to any wills or estates *pur autre vie* to which this act does not extend. 1 Vict. c. 26. 25 G. 2, c. 11 (I.). 55 G. 3, c. 192.

3. And be it further enacted, that it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir-at-law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this act, if this act had not been made; and also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estates, as

All property may be disposed of by will,

comprising customary freeholds and copyholds without surrender and before admittance, and also such of them as cannot now be devised;

estates pur autre vie;

contingent interests;

rights of entry;

and property

1 Vict. c. 26. acquired after execution of the will.

the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

As to the fees and fines payable by devisees of customary and copyhold estates.

4. Provided always, and be it further enacted, that where any real estate of the nature of customary freehold or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator: Provided also, that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering, or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine, or sums of money due as aforesaid shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid.

Wills or extracts of wills of customary freeholds and copyholds to be entered on the court rolls;

5. And be it further enacted, that when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will;

and when any such real estate could not have been disposed of by will if this act had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall, as against the devisee of such estate, have the same remedy for recovering and enforcing such fine, heriot, dues, duties, and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

1 Vict. c. 26. and the lord to be entitled to the same fine, &c. when such estates are not now devisable as he would have been from the heir in case of descent.

6. And be it further enacted, that if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Estates pur autre vie.

7. And be it further enacted, that no will made by any person under the age of twenty-one years shall be valid.

No will of a person under age valid;

8. Provided also, and be it further enacted, that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this act.

nor of a feme covert, except such as might now be made.

9. And be it further enacted, that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time(*a*).

10. And be it further enacted, that no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed.

(*a*) Amended by 15 Vict. c. 24, *infra*.

1 Vict. c. 26. Soldiers' and mariners' wills excepted.

11. Provided always, and be it further enacted, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this act.

Act not to affect certain provisions of 11 G. 4 & 1 W. 4, c. 20, with respect to wills of petty officers and seamen and marines.

12. And be it further enacted, that this act shall not prejudice or affect any of the provisions contained in an act passed in the eleventh year of the reign of his majesty King George the Fourth and the first year of the reign of his late majesty King William the Fourth, intituled "An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy," respecting the wills of petty officers and seamen in the royal navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other moneys payable in respect of services in her majesty's navy.

Publication not to be requisite.

13. And be it further enacted, that every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Will not to be void on account of incompetency of attesting witness.

14. And be it further enacted, that if any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Gifts to an attesting witness to be void (*a*).

15. And be it further enacted, that if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

Creditor attesting to be admitted a witness.

16. And be it further enacted, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Executor to be admitted a witness (*a*).

17. And be it further enacted, that no person shall, on account of his being an executor of a will, be incompetent to

(*a*) As to wills made before 1838 in these respects, see 25 Geo. II. c. 6, *supra*.

be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

Will to be revoked by marriage.

18. And be it further enacted, that every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions).

No will to be revoked by presumption.

19. And be it further enacted, that no will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

20. And be it further enacted, that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

No alteration in a will shall have any effect unless executed as a will.

21. And be it further enacted, that no obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

No will revoked to be revived otherwise than by re-execution or a codicil to revive it.

22. And be it further enacted, that no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

A devise not to be rendered inoperative by any subsequent conveyance or act.

23. And be it further enacted, that no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as

1 Vict. c. 26.

aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

A will shall be construed to speak from the death of the testator.

24. And be it further enacted, that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

A residuary devise shall include estates comprised in lapsed and void devises.

25. And be it further enacted, that, unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.

26. And be it further enacted, that a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

A general gift shall include estates over which the testator has a general power of appointment.

27. And be it further enacted, that a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

A devise without any words of limitation shall be con-

28. And be it further enacted, that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple,

or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will. 1 Vict. c. 26. strued to pass the fee.

29. And be it further enacted, that in any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: provided that this act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. The words "die without issue," or "die without leaving issue," shall be construed to mean die without issue living at the death.

30. And be it further enacted, that where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication. No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.

31. And be it further enacted, that where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied. Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.

32. And be it further enacted, that where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened im- Devises of estates tail shall not lapse.

1 Vict. c. 26. mediately after the death of the testator, unless a contrary intention shall appear by the will.

Gifts to children or other issue who leave issue living at the testator's death shall not lapse.

33. And be it further enacted, that where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Act not to extend to wills made before 1838, nor to estates pur autre vie of persons who die before 1838.

34. And be it further enacted, that this act shall not extend to any will made before the 1st day of January, one thousand eight hundred and thirty-eight, and that every will re-executed or republished, or revived by any codicil, shall for the purposes of this act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and that this act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of January, one thousand eight hundred and thirty-eight.

Act not to extend to Scotland.

35. And be it further enacted, that this act shall not extend to Scotland.

Act may be altered this session.

36. And be it enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in this present session of parliament.

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15 Vict. c. 24 (Locke King's Act).

15 Vict. c. 24. *An Act for the Amendment of an Act passed in the First Year of the Reign of Her Majesty Queen Victoria, intituled, "An Act for the Amendment of the Laws with respect to Wills."* [17th June, 1852.]

Whereas the laws with respect to the execution of wills require further amendment: be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same (as follows):

1 Vict. c. 26. 1. Where by an act passed in the first year of the reign of her Majesty Queen Victoria, intituled "An Act for the Amendment of the Laws with respect to Wills," it is enacted, that no

will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this act, if the signature shall be so placed at or after, or following or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said act or this act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

15 Vict. c. 24. When signature to a will shall be deemed valid.

2. The provisions of this act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the ecclesiastical courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a court of competent jurisdiction, in consequence of the defective execution of such will.

Act to extend to certain wills already made.

3. The word "will" shall in the construction of this act be interpreted in like manner as the same is directed to be

Interpretation of "will."

15 Vict. c. 24. interpreted under the provisions in this behalf contained in the said act of the first year of the reign of her Majesty Queen Victoria.

Short title of act. 4. This act may be cited as "The Wills Act Amendment Act, 1852."

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20 & 21 Vict. c. 77 (Court of Probate Act, 1857).

C. P. A. 1857. *An Act to amend the Law relating to Probates and Letters of Administration in England.* [25th August, 1857.]

Whereas it is expedient that all jurisdiction in relation to the grant and revocation of probates of wills and letters of administration in England should be exercised in the name of her Majesty, by one court: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Commencement of act. 1. This act (except where otherwise specially provided) shall come into operation on such day, not sooner than the first day of January, one thousand eight hundred and fifty-eight, as her Majesty shall by order in council appoint, provided that such order shall be made one month at least previously to the day so to be appointed.

Interpretation of terms. 2. In the construction of this act, unless the context be inconsistent with the meaning hereby assigned—

"Will" shall comprehend "testament" and all other testamentary instruments of which probate may now be granted:

"Administration" shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes:

"Matters and causes testamentary" shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration:

"Common form business" shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the court of probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration.

C. P. A. 1857. Testamentary jurisdiction of ecclesiastical and other courts abolished.

3. The voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial, and other courts and persons in England now having jurisdiction or authority to grant or revoke probate of wills, or letters of administration, of the effects of deceased persons, shall, in respect of such matters, absolutely cease; and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person.

Testamentary jurisdiction to be exercised by a court of probate (*a*).

4. The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in her Majesty, and shall, except as hereinafter is mentioned, be exercised in the name of her Majesty in a court to be called the court of probate, and to hold its ordinary sittings and to have its principal registry at such place or places in London or Middlesex as her Majesty in council shall from time to time appoint.

District registries to be established as in schedule (A).

13. There shall be established for each of the districts specified in schedule (A.) to this act, and at the places respectively mentioned in such schedule, a public registry attached to and under the control of the court of probate, hereinafter referred to as "the district registry."

Tenure of office of officers.

19. The registrars and district registrars shall hold their offices during good behaviour, subject to be removed by order of the lord chancellor for some reasonable cause to be in such order expressed, and the other officers of the court may be removed by the judge, with the sanction of the lord chancellor.

Qualification of registrars and district registrars.

20. No person shall be appointed a registrar or district registrar who shall not be or have been an advocate, barrister-at-law, proctor, solicitor or attorney-at-law, unless at the time of the passing of this act he is performing in person the duties of registrar or deputy registrar of some ecclesiastical court in England, or is acting as articled clerk or paid clerk to a proctor in Doctors' Commons, or as officer or clerk in the office of the said prerogative court, or of the prerogative court of York, or of any diocesan court.

Officers of the court to execute their offices in person.

21. All registrars, district registrars, officers, and clerks of the court of probate shall execute their respective offices in person and not by deputy; and no registrar of the

(*a*) C. P. A. 1858, s. 10, "County Court Jurisdiction."

C. P. A. 1857.

Registrars, &c. not to act as proctors, &c.

principal registry of the court, nor any officer or clerk in the principal registry thereof, shall during the time of his holding such office directly or indirectly practise as an advocate, barrister, proctor, solicitor, or attorney, or receive or participate in the fees of any other person so practising.

Power to judge to cause seals of the court to be provided.

22. The judge shall cause to be made seals for the court of probate, that is to say, one seal to be used in its principal registry and separate seals to be used in the several district registries, and may cause the same respectively from time to time to be broken, altered, and renewed at his discretion; and all probates, letters of administration, orders, and other instruments, and exemplifications and copies thereof respectively, purporting to be sealed with any seal of the court of probate, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

The court to have throughout all England the same powers as the prerogative court within the province of Canterbury.

23. The court of probate shall be a court of record, and such court shall have the same powers, and its grants and orders shall have the same effect, throughout all England, and in relation to the personal estate in all parts of England, of deceased persons, as the prerogative court of the archbishop of Canterbury and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said prerogative court; and all duties which, by statute or otherwise, are imposed on or should be performed by ordinaries generally, or on or by the said prerogative court, in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the court of probate: provided that no suits for legacies, or suits for the distribution of residues, shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary is hereby abolished.

Suits for legacies or distribution not to be entertained.

Power to examine witnesses.

24. The court of probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and the court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings, in the same form, or nearly as may be, as that in which a writ of subpœna ad testificandum, or of subpœna duces tecum, is now issued

As to production of deeds, &c.

[*Extended to registrars, C. P. A.* 1858, *s.* 23.]

by any of her Majesty's superior courts of law at Westminster; and every person disobeying any such writ shall be considered as in contempt of the court, and also be liable to forfeit a sum not exceeding one hundred pounds. C. P. A. 1857.

Powers of the court to enforce orders.

25. The court of probate shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear, or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees, and judgments made or given by the court under this act, and otherwise in relation to the matters to be inquired into and done by or under the orders of the court under this act as are by law vested in the high court of chancery for such purposes in relation to any suit or matter depending in such court.

Order to produce any instrument purporting to be testamentary.

26. The court of probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the court.

Registrars, &c. to have power to administer oaths.

Power to appoint, also, commissioners to administer oaths, &c.

27. The registrars and district registrars shall respectively have full power to administer oaths; and all persons who at the commencement of this act shall be acting as surrogates of any ecclesiastical court, and any other persons whom the judge shall, under the seal of the court, from time to time appoint, shall respectively have full power to administer oaths and perform such other duties in reference to matters

C. P. A. 1857.

and causes testamentary as may be assigned to them from time to time by the rules and orders under this act; and the persons so appointed shall be styled "commissioners of her Majesty's court of probate"; provided, that any party required to be examined, or any person called as a witness or required or desiring to make an affidavit or deposition under or for the purposes of this act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the Common Law Procedure Act, 1854, in cases within the provisions of that act: and any person who shall wilfully give false evidence, or who shall wilfully swear, affirm or declare falsely in any affidavit or deposition before the court of probate, or before any registrar, district registrar, or commissioner of the court, shall be liable to the penalties and consequences of wilful and corrupt perjury.

Penalty on forging or counterfeiting seals or signatures of officers.

28. If any person forge the signature of any registrar, district registrar, or commissioner for taking oaths, or forge or counterfeit any seal of the court of probate, or knowingly use or concur in using any such forged or counterfeit signature or seal, or tender in evidence any document with a false or counterfeit signature of such registrar, district registrar, or commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life or any term not less than seven years, or to imprisonment for any term not exceeding three years, with or without hard labour.

Practice of the court.

29. The practice of the court of probate shall, except where otherwise provided by this act, or by the rules or orders to be from time to time made under this act, be, so far as the circumstances of the case will admit, according to the present practice in the prerogative court.

Rules and orders to be made for regulating the procedure of the court.

30. And to the intent and end that the procedure and practice of the court may be of the most simple and expeditious character, it shall be lawful for the lord chancellor, at any time after the passing of this act, with the advice and assistance of the lord chief justice of the court of queen's bench, or any one of the judges of the superior courts of law to be by such chief justice named in that behalf, and of the judge of the said prerogative court, to make rules and orders, to take effect when this act shall come into operation, for regulating the procedure and practice of the court, and the duties of the registrars, district registrars, and other officers thereof, and for determining what shall be deemed contentious

and what shall be deemed non-contentious business, and subject to the express provisions of this act, for fixing and regulating the time and manner of appealing from the decisions of the said court, and generally for carrying the provisions of this act into effect; and after the time when this act shall come into operation it shall be lawful for the judge of the court of probate from time to time, with the concurrence of the lord chancellor and the said lord chief justice, or any one of the judges of the superior courts of law to be by such chief justice named in this behalf, to repeal, amend, add to, or alter any such rules and orders as to him, with such concurrence as aforesaid, may seem fit. C. P. A. 1857.

Mode of taking evidence in contentious matters.

31. Subject to the regulations to be established by such rules and orders as aforesaid, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, shall be examined orally by or before the judge in open court: provided always, that, subject to any such regulations as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Court may issue commissions or give orders for examination of witnesses abroad or who are unable to attend.

32. Provided, that where a witness in any such matter is out of the jurisdiction of the court, or where, by reason of his illness or otherwise, the court shall not think fit to enforce the attendance of the witness in open court, it shall be lawful for the court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose; and all the powers given to the courts of law at Westminster by the acts of the thirteenth year of king George the third, chapter sixty-three, and of the first year of king William the fourth, chapter twenty-two, for enabling the courts of law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said acts, and of any other acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said court of probate and to the examination of witnesses under the commissions and orders of the said court, and to the witnesses examined, as if such court were one of the courts of law at Westminster,

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and the matter before it were an action pending in such court.

Rules of evidence in common law courts to be observed.

33. The rules of evidence observed in the superior courts of common law at Westminster shall be applicable to and observed in the trial of all questions of fact in the court of probate.

Common law judges may sit, on request of judge of court.

34. It shall be lawful for the judge of the court of probate to sit with the assistance of any judge or judges of any of the superior courts of law at Westminster, who, upon the request of the judge of the court of probate, may find it convenient to attend for that purpose.

Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a court of law.

35. It shall be lawful for the court of probate to cause any question of fact arising in any suit or proceeding under this act to be tried by a special or common jury before the court itself, or by means of an issue to be directed to any of the superior courts of common law, in the same manner as an issue may now be directed by the court of chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding, makes application to the court of probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the court shall refuse to cause such question to be tried by a jury, such refusal of the court shall be subject to appeal as herein provided.

Powers of the court for the trial of questions by a jury.

36. When the court shall order a question of fact to be tried before itself by a jury, the court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the superior courts of common law at Westminster, and may also make any other orders which to such court may seem requisite; and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for, and called in like manner as if such jury were a jury for the trial of any cause in any of the said superior courts; and every juryman so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the court of probate shall

have the same jurisdiction, powers, and authority in all respects as belong to any superior court of common law, or to any judge thereof, for the like purposes. C. P. A. 1857.

37. When any such question shall be so ordered to be tried by a jury before the court itself, such question shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the court of probate shall have the same powers, jurisdiction, and authority as belong to any judge of any of the said superior courts sitting at nisi prius. Question to be stated, and jury sworn to try it. Court, on trial, to have the same authority as a judge at nisi prius.

38. Where the court of probate directs an issue, it shall be lawful for such court to direct such issue to be tried either before a judge of assize in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the court of chancery. Court may direct where issues shall be tried.

39. Any person considering himself aggrieved by any final or interlocutory decree or order of the court of probate may appeal therefrom to the house of lords: provided always, that no appeal from any interlocutory order of the court of probate shall be made without leave of the court of probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree. Appeal to the house of lords.

46. Probate of a will or letters of administration may, upon application for that purpose to the district registry, be granted in common form by the district registrar in the name of the court of probate and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly. Probates and administration may be granted in common form by district registrars if it shall appear by affidavit that the testator, &c. had a fixed place of abode.

47. Such affidavit shall be conclusive for the purpose of authorizing the grant, by the district registrar, of probate or administration; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death; and every probate and administration granted by any such district registrar shall effectually discharge and protect all persons paying to or dealing with any executor or adminis- Affidavit to be conclusive for authorizing grant of probate.

C. P. A. 1857.

trator thereunder, notwithstanding the want of or defect in such affidavit, as is hereby required.

District registrars not to make grants where there is contention, &c.

48. The district registrar shall not grant probate or administration in any case in which there is contention as to the grant until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.

As to transmission of notice of application for grants of probate, &c. to district registrar.

49. Notice of every application to any district registrar for the grant of probate or administration shall be transmitted by such district registrar to the registrars of the principal registry by the next post after such application shall have been made; and such notice shall specify the name and description, or addition (if any), of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit made in support of such application, and the name of the person by whom the applications has been made, and such other particulars as may be directed by rules or orders under this act; and no probate or administration shall be granted in pursuance of such application until such district registrar shall have received a certificate, under the hand of one of the registrars of the principal registry, that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said registrar of the principal registry shall forward as soon as may be to the district registrar; all such notices in respect of applications in the district registries shall be filed and kept in the principal registry, and the registrars of the principal registry shall, with reference to every such notice, examine all notices of such applications which may have been received from the several other district registries, and the applications which may have been made for grants of probate or administration at the principal registry, so far as it may appear necessary to ascertain whether or no application for probate or administration, in respect of the goods of the same deceased person, may have been made in more than one registry, and shall communicate with the district registrars as occasion may require in relations to such applications.

District registrar in case of doubt as to grant to take the directions of the judge.

50. In every case where it appears to a district registrar that it is doubtful whether the probate or letters of administration which may be applied for should or should not be granted, or where any question arises in relation to the grant or application for the grant, of any probate or administration, the district registrar shall transmit a statement of the matter in question to the registrars of the court of probate, who shall obtain the directions of the judge in relation thereto, and the judge may direct the district registrar to proceed in the matter

of the application according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district registrar in relation to the matter of such application, leaving the party applying for the grant in question to make application to the court of probate through its principal registry, or, if the case be within its jurisdiction, to a county court. C. P. A. 1857.

District registrars to transmit lists of probates and administrations, and copies of wills.

51. On the first Thursday of every month, or oftener, if required by any rules or orders to be made in that behalf, every district registrar shall transmit to the registrars of the principal registry a list, in such form and containing such particulars as may be from time to time required by the court of probate, or by any rules or orders under this act, of the grants of probate and administration made by such district registrar up to the last preceding Saturday, and not included in a previous return, and also a copy, certified by the district registrar to be a correct copy, of every will to which any such probate or administration relates.

District registrars to preserve original wills.

52. Every district registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him, in the public registry of the district, subject to such regulations as the judge of the court of probate may from time to time make in relation to the due preservation thereof, and the convenient inspection of the same.

As to caveats.

53. Caveats against the grant of probates or administrations may be lodged in the principal registry or in any district registry, and (subject to any rules or orders under this act) the practice and procedure under such caveats in the court of probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the prerogative court of Canterbury; and immediately upon a caveat being lodged in any district registry, the district registrar shall send a copy thereof to the registrars to be entered among the caveats in the principal registry; and immediately upon a caveat being entered in the principal registry, notice thereof shall be given to the district registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other district registrar to whom it may appear to the registrar of the principal registry expedient to transmit the same.

Registrar of county court to transmit certificate of decree for grant or revocation of probate.

55. On a decree being made by a judge of a county court for the grant or revocation of a probate or administration in any such cause, the registrar of the county court shall transmit to the district registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode, a certificate under the seal of the county court of such decree having been made, and

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thereupon on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree.

The judge of the county court to decide causes and enforce judgments as in other cases.

56. The judge of any county court before whom any disputed question shall be raised relating to matters and causes testamentary under this act shall, subject to the rules and orders under this act, have all the jurisdiction, power, and authority to decide the same and enforce the judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the county court.

Affidavit of the facts giving the county court jurisdiction to be conclusive, unless disproved while the matter is pending.

57. The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of the county court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorizing the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the judge of a county court before whom any matter is pending under this act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated would not have authorized him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the court of probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

As to appeals from county court.

58. Any party who shall be dissatisfied with the determination of the judge of the county court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this act, may appeal from the same to the court of probate in such manner and subject to such regulations as may be provided by the rules and orders to be made

under this act, and the decision of the court of probate on such appeal shall be final. C. P. A. 1857.

59. It shall not be obligatory on any person to apply for probate or administration to any district registry, or through any county court, but in every case such application may be made through the principal registry of the court of probate wherever the testator or intestate may at the time of his death have had his fixed place of abode; provided, that where in any contentious matter arising out of any such application it is shown to the court of probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a county court, the court of probate may send the cause to such county court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his court in the first instance.

Not obligatory to apply for probate, &c. to district registries or county court, but may in every case be made to court of probate.

[*Extended to revocations of grants, C. P. A.* 1858, *s.* 12.]

60. For regulating the procedure and practice of the county courts, and the judges, registrars, and officers thereof in relation to their jurisdiction and proceedings under this act, rules and orders may be from time to time framed, amended, and certified by the county court judges appointed for the time being to frame rules and orders for regulating the practice of the county courts under the act of the session holden in the nineteenth and twentieth years of her majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the lord chancellor, as in the said act is provided in relation to other rules and orders regulating the practice of the same courts; and for establishing rules and orders to be in force when this act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this act.

Rules and orders for regulating the procedure of county courts under the act to be made by the judges now having authority for the like purpose.

61. Where proceedings are taken under this act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this act the validity of a will is disputed, unless in the several cases aforesaid, the will affects only personal estate, the heir-at-law, devisees, and other persons having or pretending interest in the real estate affected by the will shall, subject to the provisions of this act, and to the rules and orders under this act, be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders, and to the discretion of the court.

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

C. P. A. 1857. Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the court to be binding on the persons interested in the real estate.

62. Where probate of such will is granted after such proof in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious cause or matter as aforesaid, the probate, decree, or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will, and the probate copy of such will, or the letters of administration with such will annexed, or a copy thereof respectively, stamped with the seal of her majesty's court of probate, shall in all courts and in all suits and proceedings affecting real estate, of whatever tenure (save proceedings by way of appeal under this act, or for the revocation of such probate or administration), be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked, on the ground of the invalidity of the will, or the invalidity of the will is otherwise declared by decree or order under this act, such decree or order shall enure for the benefit of the heir-at-law or other persons against whose interest in real estate such will might operate, and such will shall not be received in evidence in any suit or proceeding in relation to real estate, save in any proceeding by way of appeal from such decrees or orders.

Heir in certain cases not to be cited, and where not cited not to be affected by probate.

63. Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the court and the court is satisfied that the deceased was at the time of his decease seised of or entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded or of which the validity is in question, would not in the opinion of the court, though established as to personalty, affect real estate, but in every such case, and in any other case in which the court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the court may proceed without citing the heir or other persons interested in real estate, provided that the probate, decree, or order of the court shall not in any case affect the heir or any person in respect of his interest in real estate unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the

64. In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other pro-

ceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the court of probate: and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.

C. P. A. 1857. will is put in issue.

65. In every case in which, in any such action or suit, the original will shall be produced and proved, it shall be lawful for the court or judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid.

As to costs of proof of will.

66. There shall be one place of deposit under the control of the court of probate, at such place in London or Middlesex as her majesty may by order in council direct, in which all the original wills brought into the court or of which probate or administration with the will annexed is granted under this act in the principal registry thereof, and copies of all wills the originals whereof are to be preserved in the district registries, and such other documents as the court may direct, shall be deposited and preserved, and may be inspected under the control of the court and subject to the rules and orders under this act.

Place of deposit of original wills.

67. The judge shall cause to be made from time to time in the principal registry of the court of probate calendars of the grants of probate and administration in the principal registry, and in the several district registries of the court, for such periods as the judge may think fit, each such calendar to contain a note of every probate or administration with the will annexed granted within the period therein specified; and also a note of every other administration granted within the same period, such respective notes setting forth the dates of such grants, the registry in which the grants were made, the names of the testators and intestates, the place and time of death, the names and descriptions of the executors and administrators, and the value of the effects; and the calendars to be so made shall be printed as the same are from time to time completed.

Judge to cause calendars to be made from time to time in the principal registry, and to be printed.

68. The registrars shall cause a printed copy of every calendar to be transmitted through the post or otherwise to each of the district registries, and to the office of her majesty's

Registrar to transmit printed copies to certain offices.

C. P. A. 1857.

prerogative in Dublin, the office of the commissary of the county of Midlothian in Edinburgh, and such other offices, if any, as the court of probate shall from time to time by rule or order direct; and every printed copy of a calendar so transmitted as aforesaid shall be kept in the registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of one shilling for each search, without reference to the number of calendars inspected.

Official copy of whole or part of will may be obtained.

69. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the registry or district registry where the will has been proved or the administration granted, on the payment of such fees as shall be fixed for the same by the rules and orders under this act.

Administration pendente lite.

[*Extended to appeals, C. P. A.* 1858, *s.* 22.]

70. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the court of probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the court, and act under its direction.

Receiver of real estate pendente lite.

[*The court may require security from receivers, C. P. A.* 1858, *s.* 21.]

71. It shall be lawful for the court of probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the court may direct.

Remuneration to administrators pendente lite and receivers.

72. The court of probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court think fit.

Power as to appointment of administrator.

73. Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the united kingdom of Great Britain and Ireland, and it shall appear to the court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the

deceased, or of any part of such personal estate, other than the person who if this act had not been passed would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person to the person who if this act had not passed would by law have been entitled to a grant thereof, but it shall be lawful for the court, in its discretion, to appoint such person as the court shall think fit to be such administrator upon his giving such security (if any) as the court shall direct, and every such administration may be limited as the court shall think fit. C. P. A. 1857.

74. The provisions of an act passed in the thirty-eighth year of his late majesty king George the third, chapter eighty-seven, shall apply (in like manner) to all cases where letters of administration have been granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of her majesty's courts of law and equity. 38 Geo. 3, c. 87, extended to administrators.

75. After any grant of administration, no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked. After grant of administration no person to have power to sue as an executor.

76. Where before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against any administrator so appointed, the court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator, in like manner as if the proceeding had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such court may direct. Revocation of temporary grants not to prejudice actions or suits.

77. Where any probate or administration is revoked under this act, all payments *bonâ fide* made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made. Payments under revoked probates or administration to be valid.

78. All persons and corporations making or permitting to be made any payment or transfer *bonâ fide*, upon any probate or letters of administration granted in respect of the Persons, &c. making payment upon probates

C. P. A. 1857. granted for estate of deceased person to be indemnified.

estate of any deceased person under the authority of this act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

Rights of an executor renouncing probate to cease, as if he had not been named in the will.

79. Where any person, after the commencement of this act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor.

Sureties to administration bonds.

80. So much of an act passed in the twenty-first year of king Henry the eighth, chapter five, and of an act passed in the twenty-second and twenty-third years of king Charles the second, chapter ten, and of an act passed in the first year of king James the second, chapter seventeen, as requires any surety, bond or other security to be taken from a person to whom administration shall be committed, shall be repealed.

Persons to whom grant of administration shall be committed shall give bond.

81. Every person to whom any grant of administration shall be committed shall give bond to the judge of the court of probate to enure for the benefit of the judge for the time being, and, if the court of probate or (in the case of a grant from the district registry) the district registrar shall require, with one or more surety or sureties, conditioned for duly collecting, getting in and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct; provided that it shall not be necessary for the solicitor for the affairs of the treasury or the solicitor of the duchy of Lancaster applying for or obtaining administration to the use or benefit of her majesty to give any such bond as aforesaid.

[*Bonds given before 11th January*, 1858, *enure to the benefit of the judge of this Court, C. P. A.* 1858, *s.* 15.]

Penalty on bond.

82. Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the court or district registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the court or district registrar so to do, and the court or district registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the court or district registrar shall think reasonable.

Power of court to assign bond.

83. The court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the court to assign the same to some person, to be named in such order, and such person, his executors or

administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond. C. P. A. 1857.

84. All suits, whether original or by way of appeal, which at the commencement of this act shall be pending in any court in England respecting any grant of probate or administration, shall be transferred with all the proceedings therein, to the court of probate, there to be dealt with and decided according to the rules and practice of the said court, except so far as such court may think it expedient to adopt, for the purposes of such transferred suits or any of them, the rules or practice of the court in which the same shall have been pending, to which end the court of probate shall for the purposes of such suits, have all the jurisdiction, power and authority possessed by the court from which such suit shall be transferred; but this enactment shall not apply to proceedings by way of appeal pending before her majesty in council, which proceedings shall be carried on and prosecuted in the same manner in all respects as if this act had not passed; and every person who if this act had not passed might have appealed to her majesty in council against any proceeding, decree or sentence of any court respecting the grant of any probate or administration, may, notwithstanding this act, appeal to her majesty in council against such proceeding, decree or sentence: provided also, that her majesty in council may remit to the court of probate any cause or proceeding pending by way of appeal as aforesaid, or to be brought before her majesty in council upon appeal as aforesaid, with such directions as the justice of the case may require. Pending suits transferred to court of probate. Not to apply to appeals pending before her majesty in council.

85. Provided, that if at the commencement of this act any cause which would be transferred to the court of probate under the enactment hereinbefore contained shall have been heard before any judge having jurisdiction in relation to such cause before the commencement of this act, and shall be standing for judgment, such judge may, at any time within six weeks after the commencement of this act, give in to one of the registrars of the court a written judgment thereon, signed by him, and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the court of probate on the day on which the same shall so be delivered to the registrar, and shall be subject to appeal under this act, Power to judges whose jurisdiction is determined to deliver written judgments.

86. All grants of probates and administrations made before Void and void-

C. P. A. 1857. able probates and administrations.

the commencement of this act, which may be void or voidable by reason only that the courts from which repectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants: provided that any such grants of probate or administration shall not be made valid by this act when the same shall before the commencement of this act have been revoked or determined by any court of competent jurisdiction to have been void; nor shall this act prejudice or affect any proceedings pending at the time of the passing of this act in which the validity of any such probate or administration shall be in question: if the result of such proceedings shall be to invalidate the same, such probate or administration shall not be rendered valid by this act; and if such proceedings abate or become defective by reason of the death of any party, any person who but for this act would have any right by reason of the invalidity of such probate or administration shall retain such right, and may commence proceedings for enforcing the same within six calendar months after the death of such party.

Probates and administrations granted before this act comes into operation.

87. Legal grants of probate and administration made before the commencement of this act, and grants of probate and administration made legal by this act, shall have the same force and effect as if they had been granted under this act, but in every such case there shall be due and payable to her majesty such further stamp duty, if any, as would have been chargeable on any probate or administration which but for this act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inventories and accounts in respect thereof shall be returnable to the court of chancery, and all bonds taken in respect thereof may be enforced by or under the authority of the court of chancery, at the discretion of the court.

Probate or administration may be granted of personal estate not affected by the former grants.

88. Provided, that where any probate or administration has been granted before the commencement of this act, and the deceased had personal estate in England not within the limits of the jurisdiction of the court by which the probate or administration was granted, or otherwise not within the operation of the grant, it shall be lawful for the court of probate to grant probate or administration only in respect of such personal estate not covered by any former probate or administration, and such grant may be limited accordingly.

Judges of present ecclesiastical courts and others to transmit all wills, &c. to the registry.

89. The acting judge and registrar of every court, and other person now having jurisdiction to grant probate or administration, and every person having the custody of the documents and papers of or belonging to such court or person, shall, upon receiving a requisition for that purpose, under the seal of the court of probate, from a registrar, and at the

time and in the manner mentioned in such requisition, transmit to the court of probate, or to such other place as in such requisition shall be specified, all records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents and every other instrument relating exclusively or principally to matters or causes testamentary, to be deposited and arranged in the registry of each district or in the principal registry, as the case may require, so as to be easy of reference, under the control and direction of the court. C. P. A. 1857. [*See C. P. A.* 1858, *s.* 27.]

90. No judge, registrar or other person who shall wilfully refuse or neglect so to transmit such records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents or any other instrument relating to matters or causes testamentary, shall be entitled to any compensation under this act, and every judge, registrar or other person so refusing or neglecting shall be liable to a penalty of one hundred pounds, to be sued for and recovered, together with full costs of suit, in any of her majesty's superior courts, by the registrars. Penalty for default.

91. One or more safe and convenient depository or depositories shall be provided, under the control and directions of the court of probate, for all such wills of living persons as shall be deposited therein for safe custody; and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as the judge shall from time to time by any order direct. As to depositories for safe custody of the wills of living persons.

92. Nothing in this act contained shall affect the stamp duties now by law payable upon probates and administrations: and all the clauses, provisions, rules, regulations, and directions contained in any act of parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this act, shall be in full force, and shall be observed, applied, and put in execution for securing the duties payable on probates of wills and letters of administration granted under this act, as if such duties had been granted by this act, and the said clauses, provisions, rules and regulations relating thereto were herein repeated and specially enacted. This act not to affect the stamp duties on probates and administrations.

93. The registrars of the court of probate shall, within such period as the judge shall direct after probate of any will or letters of administration shall have been granted, deliver or cause to be delivered to the commissioners of inland revenue, or their proper officer, the following documents respectively; that is to say, in the case of a probate or administration with The registrars to deliver copies of wills, &c. to the commissioners of inland revenue.

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a will annexed a copy of the will and the original affidavit, and in the case of letters of administration without a will annexed such original affidavit, and in every case of letters of administration a copy or extract thereof, and in every case such certificate or note of the grant as the said commissioners may require.

Sections 8 & 9 of 53 Geo. 3, c. 127, repealed in part as to the court of probate.

94. Whereas by an act passed in the fifty-third year of king George the third, chapter one hundred and twenty-seven, it is enacted, that if any proctor of any ecclesiastical court shall act as such, or permit his name to be used in any suit appertaining to the office of a proctor, or in obtaining probates of wills or letters of administration, for or on account or for the profit or benefit of any person not entitled to act as a proctor, or shall permit any such person to participate in such profit or benefit, such proctor shall be subject to certain penalties therein mentioned; and it is also therein further enacted, that if any person shall, in his own name or in that of any other person, do or perform any act whatever belonging to the office of a proctor in consideration of any gain, fee or reward, or with a view to participate in the benefit to be derived from the office, functions or practice of a proctor, without being admitted and enrolled, every such person shall be subject to certain other penalties therein mentioned: be it enacted, nothing in the said act contained shall prevent any proctor of the court of probate from acting as agent of any attorney or solicitor in relation to any matter testamentary, or from allowing him to participate in the profits of and incident thereto.

Fees to be taken by officers of court and by officers of county courts.

95. The lord chancellor, with such assistance as is hereinbefore provided as to rules and orders to be made in pursuance of this act, shall, as soon as conveniently may be after the passing of this act, fix a table or tables of fees to be taken by the officers of the court of probate, and the proctors, solicitors and attorneys practising therein, including the district registrars, and the proctors, solicitors and attornies practising in district registries, and of fees to be taken by the officers of the county courts in respect of business under this act, and of fees to be payable in respect of searches, inspection, and printed and other copies of and extracts from records, wills and other documents in the custody or under the control of the court of probate, and the judge of the court of probate, with such concurrence as is hereinbefore provided in respect of the amendment of rules and orders, is hereby empowered, from time to time after this act shall come into operation, to add to, reduce, alter or amend such table or tables of fees, as he may see fit: provided that such tables of fees and every alteration of the same, except so far as respects the fees which are to be taken by district registrars, proctors and others, for

their own remuneration and to their own use, shall be subject to the approval of the commissioners of her majesty's treasury: and every such table of fees, and every addition, reduction, alteration or amendment to, in, or of the same, shall be published in the *London Gazette;* and no other fees than those specified and allowed in such tables of fees shall be demanded or taken by such officers and proctors, solicitors and attornies. C. P. A. 1857.

Taxation of costs.

96. The bill of any proctor, attorney or solicitor, for any fees, charges or disbursements in respect of any business transacted in the court of probate, whether contentious or otherwise, or any matters connected therewith, shall, as well between proctor or attorney or solicitor and client as between party and party, be subject to taxation by any one of the registrars of the said court, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under this act, and the certificate of the registrar of the amount at which such bill is taxed shall be subject to appeal to the judge of the said court.

Fees not to be paid in money, but by stamps.

97. None of the fees payable to the officers of the court of probate, or of any county court, in respect of business under this act, except the fees of the district registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors and attorneys, and such fees as may be authorized to be taken for their own use by surrogates and commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable.

Provisions of acts relating to stamps to be applicable to stamps for collecting fees.

98. The fees to be collected by means of stamps under the provisions of this act shall be deemed "Stamp Duties," and shall be placed under the management of the Commissioners of Inland Revenue, to be collected and paid into the exchequer under the same laws and regulations as those made in respect of the other duties of "stamps," and the provisions in the several acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall in all cases not hereby expressly provided for be of full force and effect with respect to the stamps to be provided under or by virtue of this act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually, to all intents and purposes, as if such provisions had been herein repeated and specially

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enacted with reference to the said last-mentioned stamps and sums of money respectively; but a separate and distinct account of all money received in respect of the said last-mentioned stamps for every year ending the thirty-first day of March shall be laid before both houses of parliament within one month after the termination of such year of accounts, or, if parliament be not then sitting, within one month after the commencement of the next session of parliament.

No document to be received or used unless stamped.

99. No document which, under this act, and any table of fees for the time being in force under this act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the court of probate, or be of any validity for any purpose whatsoever, unless or until the same shall have the proper stamp impressed thereon or affixed thereto; provided that if at any time it shall appear that any such document has through mistake or inadvertence been received or filed, or used without having such stamp impressed thereon, or affixed thereto, it shall be lawful for the judge of the court of probate, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto in compliance with any such order, such document and every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

Officers of the court may be dismissed for fraud or wilful neglect in relation to stamps.

100. If any officer of the court of probate, or any other person employed under this act, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this act, or to any fee or sum of money to be collected, or which ought to be collected, by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect or omission whereby any fee or money which ought to be collected by means of a stamp under this act shall be lost, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment if the judge of the court of probate shall think fit so to order.

Establishments in district registries.

110. There shall be a clerk or so many clerks in each district registry, and there shall be paid to such clerk or clerks such salary or respective salaries as the judge of the court, with the sanction of the commissioners of her majesty's treasury, may from time to time think fit to direct; and it shall be lawful for such judge to prescribe from time to time the qualifications which shall be possessed by persons appointed to be clerks in such district registries, and generally to regulate the establishment of such district registries with reference to the duties to be performed therein; and the clerk or clerks

in each district registry shall be appointed by the district registrar, with the approval of the judge; and every such clerk may be removed by such judge, or by the district registrar with the approval of the judge. C. P. A. 1857.

Fees payable to district registrars.

111. Each district registrar shall, out of the fees taken by him in respect of the business in his respective district registry, pay the salary or salaries of the clerk or clerks in such registry, and the residue of such fees shall be retained by such district registrar to his own use; and every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the commissioners of her majesty's treasury a faithful account in writing of all such fees received by him during such year: provided that it shall be lawful for the commissioners of her majesty's treasury, at any time after the commencement of this act, to order that the district registrars under this act, or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively; and thereupon all fees payable to the district registrars so ordered to be paid by salaries shall be accounted for and paid into the exchequer at such times and under such regulations as the commissioners of her majesty's treasury shall direct, and shall be carried to and form part of the consolidated fund of the United Kingdom, and the salaries of such district registrars and of their clerks shall be paid out of such monies as shall be provided by parliament for that purpose, and no such district registrar shall be deemed to have any claim to compensation on account of any diminution of his emoluments by reason of any such order.

District registrars may be paid by salaries instead of fees.

Publication of accounts.

114. The commissioners of her majesty's treasury shall cause to be prepared in each year ending December thirty-one a return of all fees and monies levied in such year under the authority of this act; also a return of the annual salaries of the judge of the said court of probate, and of the registrars, deputy registrars, clerks, and all others holding offices either in London or in the country districts, with an account of all the incidental expenses relating to the offices aforesaid, whether such salaries and expenses be defrayed out of fees or out of any other monies; also a return of all superannuations, pensions, annuities, retiring allowances and compensations made payable under this act in each year, stating the gross amount and the amount in detail of such charges: provided always, that all such returns aforesaid shall be presented to both houses of parliament on or before the thirty-first day of March in each year, if parliament is then sitting, and if parliament is not sitting, then such returns shall be presented within one month of the first meeting of parliament after the thirty-first day of March in each year: provided also, that

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every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the commissioners of her majesty's treasury a faithful account in writing of all such fees received by him during such year.

Judge if a privy councillor to be a member of judicial committee.

115. The judge of the court if a privy councillor shall be a member of the judicial committee of the privy council.

Treasury to provide the buildings for registries, &c.

118. It shall be lawful for the commissioners of her majesty's treasury, out of such monies as may be provided and appropriated by parliament for that purpose, to cause to be purchased, erected, hired, or otherwise provided such offices and buildings as may be suitable for the district registries and depository or depositories for wills, and such buildings, if any, as may be necessary for the court and principal registry, in addition to the building by this act vested in the said registrars, or after the determination of their interest in such building.

Rules and order to be laid before parliament.

119. All rules and orders to be made under this act concerning procedure and practice, and the table of fees to be fixed under this act, and all alterations thereof, to be from time to time made, shall be laid before both houses of parliament within one month after the making thereof if parliament be then sitting, or if parliament be not then sitting, within one month after the commencement of the then next session of parliament.

SCHEDULE (A). C. P. A. 1857.

Districts and Places of District Registries throughout England and Wales.

Districts.	Places of District Registries.
County of Northumberland (*a*)	Newcastle-on-Tyne.
County of Durham	Durham.
Counties of Cumberland and Westmoreland	Carlisle.
West Riding of the county of York	Wakefield.
North Riding ditto East Riding ditto (*b*), including the city of York and Ainsty	York.
County of Lancaster, except the hundred of Salford and West Derby and the City of Manchester.	Lancaster.
City of Manchester and hundred of Salford	Manchester.
Hundred of West Derby in Lancashire	Liverpool.
County of Chester (*c*)	Chester.
Counties of Carnarvon and Anglesea	Bangor.
Counties of Flint, Denbigh and Merioneth	St. Asaph.
County of Derby	Derby.
County of Nottingham (*d*)	Nottingham.
Counties of Leicester and Rutland	Leicester.
County of Lincoln (*e*)	Lincoln.
Counties of Salop and Montgomery	Shrewsbury.
Northern division of Northampton, and counties of Huntingdon and Cambridge (*f*).	Peterborough.
County of Norfolk (*g*)	Norwich.
Eastern division of the county of Suffolk and north division of the County of Essex.	Ipswich.
Western division of the county of Suffolk	Bury St. Edmunds.
County of Bedford and southern division of Northamptonshire (*h*).	Northampton.
County of Warwick (*i*)	Birmingham.
County of Stafford (*k*)	Lichfield.
Counties of Radnor, Brecknock and Hereford	Hereford.
Counties of Cardigan, Carmarthen (*l*) and Pembroke (*m*), with the deaneries of East and West Gower, in the county of Glamorgan.	Carmarthen.

(*a*) Including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.
(*b*) Including the town and county of Kingston-on-Hull.
(*c*) Including the city of Chester.
(*d*) Including the town of Nottingham.
(*e*) Including the city of Lincoln.
(*f*) Including the University of Cambridge.
(*g*) Including the city of Norwich.
(*h*) Including the town of Northampton.
(*i*) Including the city of Coventry.
(*k*) Including the city of Lichfield.
(*l*) Including the town of Carmarthen.
(*m*) Including the town of Haverfordwest.

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Districts.	Places of District Registries.
Counties of Glamorgan (with the exception of the deaneries of East and West Gower), and Monmouth.	Llandaff.
County of Worcester (*n*)	Worcester.
County of Gloucester (*o*), except the present Bristol County Court district.	Gloucester.
Bristol and Bath present County Court districts..	Bristol.
Counties of Oxford (*p*), Berks, Bucks	Oxford.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district.	Wells.
Western division of the county of Somerset	Taunton.
County of Devon (*q*)	Exeter.
County of Cornwall	Bodmin.
County of Wilts	Salisbury.
County of Dorset (*r*)	Blandford.
County of Hants (*s*)	Winchester.
Eastern division of the county of Sussex (*t*)	Lewes.
Western division of the county of Sussex	Chichester.
East division of the county of Kent (*u*)	Canterbury.

The divisions of counties referred to in the schedule are the divisions of the same counties described for election purposes in the act of the second and third years of King William the Fourth, chapter sixty-four; and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

(*n*) Including the city of Worcester.
(*o*) Including the city of Gloucester.
(*p*) Including the University of Oxford.
(*q*) Including the city of Exeter.
(*r*) Including the town of Poole.
(*s*) Including the town of Southampton and Isle of Wight.
(*t*) Including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.
(*u*) Including the city of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

21 & 22 Vict. c. 95 (C. P. A. 1858).

An Act to amend the Act of the Twentieth and Twenty-first Victoria, Chapter Seventy-seven. C. P. A. 1858.

[2nd August, 1858.]

Whereas in the last session of parliament an act was passed, intituled "An Act to amend the Law relating to Probates and Letters of Administration in England," hereinafter designated "The Court of Probate Act:" and whereas it is expedient to amend the same: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows: 20 & 21 Vict. c. 77.

The judge of the High Court of Admiralty and the judge of the Court of Probate may sit for each other.

1. It shall be lawful for the judge of the High Court of Admiralty to sit in open court or in chambers for the judge of her Majesty's Court of Probate, and it shall be lawful for the judge of her Majesty's Court of Probate to sit in open court or in chambers for the judge of the High Court of Admiralty; and all orders, decrees or sentences, and other acts whatsoever, made, decreed, pronounced or done by either of the judges aforesaid acting for the other shall, in the court books, be stated to have been made, decreed, pronounced or done by such judge sitting and acting on behalf of such other judge; and such orders, decrees, sentences and other acts so made, decreed, pronounced or done shall have the same force and validity in law as if they had been made, decreed, pronounced or done by the judge on whose behalf they purport to have been so made, decreed, pronounced or done.

Serjeants and barristers may practise in Court of Probate.

2. All serjeants and barristers-at-law shall be entitled from and after the passing of this act to practise in all causes and matters whatsoever in the Court of Probate.

The judge of the Court of Probate may sit in chambers.

3. It shall be lawful for the judge of the Court of Probate for the time being to sit in chambers for the despatch of such part of the business of the said court as can in the opinion of the said judge, with advantage to the suitors, be heard in chambers: and the times at which such sittings shall be held shall from time to time be fixed by the judge: provided always, that no question shall be heard in chambers which either party shall require to be heard in open court.

The treasury to cause chambers to be provided.

4. The commissioners of her majesty's treasury shall from time to time provide chambers in which the judge of the Court of Probate shall sit for the despatch of such business as aforesaid; and until such chambers are provided elsewhere the said judge shall sit in chambers in any room which he may find convenient for the purpose.

C. P. A. 1858.

Powers of judge when sitting in chambers.

5. The judge of the Court of Probate, when so sitting in chambers, shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open court.

Power to appoint an additional registrar.

6. Whereas there are now three registrars only of the principal registry of the said court, that is to say, Augustus Frederic Bayford, the senior registrar; Charles John Middleton, the second registrar; and Edward Francis Jenner, the third registrar: and whereas the duties of the said principal registry cannot be efficiently discharged by three registrars: be it enacted, that it shall be lawful for the judge of the said court to appoint a fourth registrar for the principal registry of the said court, in addition to the three registrars appointed under "The Court of Probate Act;" and from and after the appointment of such fourth registrar there shall be paid to each of the said registrars the annual salary mentioned in the schedule to this act, in lieu of the salary provided by "The Court of Probate Act," such salaries to be paid out of any monies provided by parliament for the purposes of the said act: provided always, that nothing herein contained shall be construed to diminish the salary of any of the three registrars appointed before the passing of this act.

Vacancy in office of registrar, how to be filled up.

7. On the death, resignation or removal of any of the four registrars of the said principal registry, other than the junior registrar for the time being, the vacancy thereby occasioned shall be filled up by the registrar next in seniority to whom no sufficient objection shall be made to the satisfaction of the judge of the said court.

Clerks in the principal registry eligible to be registrars, &c.

8. Clerks having served five years in the principal registry of the Court of Probate shall be eligible to be appointed registrars or district registrars of the said court.

Certain articled clerks to be admitted proctors of the Court of Probate.

9. It shall be lawful for the judge of the Court of Probate to admit any person who at the time of the passing of "The Court of Probate Act" was articled to a proctor in Doctors' Commons, or to a proctor belonging to any ecclesiastical court, so soon as he shall have served the full term for which he was articled or within the period of one year therefrom, to be a proctor of her majesty's Court of Probate, upon the payment of such fees as shall be fixed by the judge of the said court with the sanction of the commissioners of her majesty's treasury.

Where personalty is under 200*l.* county court to have jurisdiction.

10. Where it appears by affidavit to the satisfaction of a registrar of the principal registry that the testator or intestate in respect of whose estate a grant or revocation of a grant or probate or letters of administration is applied for had at the time of his death his fixed place of abode in one of the districts specified in schedule (A) to the said "Court of Probate Act," and that the personal estate in respect of which such probate

or letters of administration are to be or have been granted, exclusive of what the deceased may have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, was at the time of his death under the value of two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of three hundred pounds or upwards, the judge of the county court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto. C. P. A. 1858.

11. Section fifty-four of the said "Court of Probate Act" shall be and the same is hereby repealed. Sect. 54 of 20 & 21 Vict. c. 77, repealed.

12. The said "Court of Probate Act," section fifty-nine, shall, so far as the county courts or a judge thereof are concerned, apply to an application for the revocation of a grant of probate or administration as well as to an application for any such grant. Sect. 59 of 20 & 21 Vict. c. 77, to apply to applications for revocation of grants.

13. The power and authority to make rules and orders for regulating the proceedings of the county court shall extend and be applicable to all proceedings in the county courts under this act, and also to framing a scale of costs and charges to be paid to counsel, proctors, solicitors and attornies, in respect of proceedings in county courts, under the said "Court of Probate Act" or this act. Power to make rules and orders and frame scales of fees for the county courts.

14. All non-contentious business pending in any ecclesiastical court at the time when "The Court of Probate Act" came into operation shall be deemed to have been transferred to the Court of Probate, in the same way as all pending suits were transferred to the said court under the said act, and all acts executed under the authority of any such ecclesiastical court with reference to such business which would have been valid if the authority of such court had not been abolished shall be valid, and all oaths and bonds sworn and executed in manner required by any such ecclesiastical court in reference to such business, prior to the eleventh day of January, one thousand eight hundred and fifty-eight, shall continue to have and be deemed to have had the same force and effect in law as they would have had if sworn and executed in pursuance of the provisions of the said act or of this act. Non-contentious business pending in any ecclesiastical court to be transferred.

15. Bonds given to any archbishop, bishop or other person exercising testamentary jurisdiction in respect of grants of letters of administration made prior to the eleventh day of January, one thousand eight hundred and fifty-eight, or Bonds given before Jan. 11, 1858, to remain in force.

C. P. A. 1858. in respect of grants made in pursuance of "The Court of Probate Act" or of this Act, whether taken under a commission or requisition executed before or after the said eleventh day of January, shall enure to the benefit of the judge of the Court of Probate, and, if necessary, shall be put in force in the same manner and subject to the same rules (so far as the same may be applicable to them) as if they had been given to the judge of the said court subsequently to that day.

An executor not acting or not appearing to a citation to be treated as if he had renounced.

16. Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the representation of his effects shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor.

Judge of the Court of Probate may amend grants made before Jan. 11, 1858.

17. The judge of the Court of Probate shall have and exercise the same power of altering and amending grants of probate and letters of administration made before the eleventh day of January, one thousand eight hundred and fifty-eight, as any ecclesiastical court had and exercised in respect of such grants.

Provisions of 38 Geo. 3, c. 87, and 20 & 21 Vict. c. 77, extended to all cases of executors and administrators.

18. The provisions of an act passed in the thirty-eighth year of George the third, chapter eighty-seven, and of "The Court of Probate Act," shall be extended to all executors and administrators residing out of the jurisdiction of her majesty's courts of law and equity, whether it be or be not intended to institute proceedings in the Court of Chancery, and to all grants made before and subsequently to the passing of the last-mentioned act, and it shall be lawful to alter the language of the grant prescribed by the first-named statute so as to make it apply to grants made in the Court of Probate under the said last-mentioned act.

Between the death of the person deceased and the grant the property to vest in the judge ordinary.

19. From and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the judge of the Court of Probate for the time being, in the same manner and to the same extent as heretofore they vested in the ordinary.

Second and subsequent grants to be made where the original will or the original letters of ad-

20. All second and subsequent grants of probate or letters of administration shall be made in the principal registry, or in the district registry where the original will is registered, or the original grant of letters of administration has been made, or in the district registry to which the original will or a registered copy thereof, or the record of the original grant of administration, have been transmitted, by virtue of a requisition

issued in pursuance of section eighty-nine of "The Court of Probate Act;" and for and in respect of such second or subsequent grants of probate, or letters of administration, to be made in a district registry, it shall not be requisite that it should appear by affidavit that the testator or intestate had a fixed place of abode within the district in which the application is made. C. P. A. 1858. ministration are deposited.

21. It shall be lawful for the Court of Probate to require security by bond, in such form as by any rules and orders shall from time to time be directed, with or without sureties, from any receiver of the real estate of any deceased person appointed by the said court, under section seventy-one of "The Court of Probate Act;" and the court may, on application made on motion or in a summary way, order one of the registrars of the court to assign the same to some person to be named in such order; and such person, his executors or administrators, shall thereupon be entitled to sue on the said security, or put the same in force in his or their own name or names, both at law and in equity, as if the same had been originally given to him instead of to the judge of the said court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount due in virtue thereof. The Court of Probate may require security from a receiver of real estate.

22. All the provisions contained in "The Court of Probate Act," respecting grants of administration pending suit, shall be deemed to apply to the case of appeals to the house of lords under the said act. Administration pending suit deemed to apply to appeals.

23. It shall be lawful for a registrar of the principal registry of the Court of Probate, and whether any suit or other proceeding shall or shall not be pending in the said court, to issue a subpœna requiring any person to produce and bring into the principal or any district registry, or otherwise as in the said subpœna may be directed, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power or under the control of such person; and such person, upon being duly served with the said subpœna, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default as if he had been a party to a suit in the said court, and had been ordered by the judge of the Court of Probate to produce and bring in such paper or writing. Registrar may issue subpœnas to produce papers, &c.

24. The registrars of the principal registry shall be invested with and shall and may exercise with reference to proceedings in the Court of Probate the same power and authority which surrogates of the judge of the Prerogative Court of Canterbury could or might before the passing of "The Court of Probate Act" have exercised in chambers with reference to proceedings in the said prerogative court. The registrars to do all acts heretofore done by surrogates.

C. P. A. 1858. Copies of wills may be certified by a stamp.

25. Copies of wills required to be transmitted by a district registrar, and certified by him to be correct copies, under section fifty-one of "The Court of Probate Act," may be so certified and transmitted under a stamp provided by the district registrar for that purpose, and approved of by the judge of the Court of Probate.

Certificates from the principal registry may be stamped.

26. Certificates issued from the principal registry with reference to notices of applications transmitted from the district registrars under section forty-nine of "The Court of Probate Act" need not be made under the hand of a registrar of the principal registry, as required by the said act, but may be issued under a stamp provided for that purpose, and approved of by the judge of the Court of Probate.

Requisitions may be issued for the transmission of a single paper.

27. Whereas doubts have been entertained whether a requisition can be issued under section eighty-nine of "The Court of Probate Act" for the transmission of one or more papers only, not being all the papers and documents in the custody of the person to whom any such requisition may be addressed: be it therefore enacted and declared, that the said section shall be construed to extend to all requisitions, whether for the transmission of one or of more records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, or other instruments relating exclusively or principally to matters and causes testamentary.

Power to enforce decree as to costs.

28. The judge of the Court of Probate, and the registrars of the principal registry thereof, shall respectively, in any case where an ecclesiastical or other court having testamentary jurisdiction had previously to the eleventh day of January, one thousand eight hundred and fifty-eight, made any order or decree in respect of costs, have the same power of taxing such costs, and enforcing payment thereof, or of otherwise carrying such order or decree into effect, as if the cause wherein such decree was made had been originally commenced and prosecuted in the said Court of Probate: provided that in taxing any such costs, or any other costs incurred in causes depending in any such courts before the time aforesaid, all fees, charges and expenses shall be allowed which might have been legally made, charged and enforced according to the practice of the Prerogative Court of Canterbury.

Letters of administration granted in Ireland not to be re-sealed in England until sufficient bond is given.

29. Letters of administration granted by the Court of Probate in Ireland shall not be re-sealed, under section ninety-five of the twentieth and twenty-first Victoria, chapter seventy-nine, until a certificate has been filed under the hand of a registrar of the Court of Probate in Ireland that bond has been given to the judge of the Court of Probate in Ireland in a sum sufficient in amount to cover the property in England

as well as in Ireland in respect of which such administration is required to be re-sealed. C. P. A. 1858.

Commissioners may be appointed in the Isle of Man, &c.

30. It shall be lawful for the judge of the Court of Probate to appoint, by commission under seal of the court, any persons practising as solicitors in the Isle of Man, in the Channel Islands, or any of them, to administer oaths, and to take declarations or affirmations, and to exercise any other powers which can be exercised by commissioners of her Majesty's Court of Probate; and such persons shall be entitled from time to time to charge and take such fees as any other persons performing the same duties in the Court of Probate may charge and take.

Affidavits, before whom to be sworn when parties making them reside in foreign parts.

31. In cases where it is necessary to obtain affidavits, declarations or affirmations to be used in the Court of Probate from persons residing in foreign parts out of her Majesty's dominions, the same may be sworn, declared or affirmed before the persons empowered to administer oaths under the act of the sixth of George the fourth, chapter eighty-seven, or under the act of the eighteenth and nineteenth of Victoria, chapter forty-two; provided that, in places where there are no such persons as are mentioned in the said acts, such affidavits, declarations or affirmations may be made, declared and affirmed before any foreign local magistrate or other person having authority to administer an oath.

Affidavits, before whom to be sworn.

32. Affidavits, declarations and affirmations to be used in the Court of Probate may be sworn and taken in Scotland, Ireland, the Isle of Man, the Channel Islands, or any colony, island, plantation or place out of England under the dominion of her Majesty, before any court, judge, notary public or person lawfully authorized to administer oaths in such country, colony, island, plantation or place respectively, or, so far as relates to the Isle of Man and the Channel Islands, before any commissary, ecclesiastical judge or surrogate, who, at the time of the passing of "The Court of Probate Act," was authorized to administer oaths in the Isle of Man or in the Channel Islands respectively, and all registrars and other officers of the Court of Probate shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public or person, which shall be attached, suspended or subscribed to any such affidavit, declaration or affirmation, or to any other document.

Persons forging seal or signature guilty of felony.

33. If any person shall forge any such seal or signature as last aforesaid, or any seal or signature impressed, affixed or subscribed, under the provisions of the said act of the sixth of George the fourth, or of the said act of the eighteenth and nineteenth Victoria, to any affidavit, declaration or affirmation to be used in the Court of Probate, or shall tender in evidence any such document as aforesaid with a

C. P. A. 1858.

false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years nor less than one year; and whenever any such document has been admitted in evidence by virtue of this act, the court or the person who has admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, for such period and subject to such conditions as to the said court or person shall seem meet; and every person charged with committing any felony under this act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in the county, district, or place in which he may be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed, in any county, district, or place in which the principal offender may be tried.

Persons taking a false oath before a surrogate guilty of perjury.

34. Any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely, in any affidavit or deposition before any surrogate having authority to administer oaths under "The Court of Probate Act," or before any person who before the passing of the said act was a surrogate authorized to administer oaths in any of the Channel Islands, or before any person authorized to administer oaths under this act, shall be liable to the penalties and consequences of wilful and corrupt perjury.

Provision for the necessary absence of officers.

35. In case any officer appointed or to be appointed by virtue of "The Court of Probate Act, 1857," or of this act, shall, by reason of ill-health or other infirmity, become temporarily incapable of performing the duties of his office, it shall be lawful for the judge to appoint some other fit and proper person to discharge the duties of such office for any period not exceeding six calendar months at any one time, and the person so appointed shall, during such period, have all the power and authority of the officer in whose place he shall be so appointed, and shall be paid by such officer such sum by way of salary or allowance as shall be agreed upon between them respectively or be fixed by the judge, and the judge may, at his discretion, give leave of absence to any officer of the court for any period not exceeding two months in any year, and shall have the like power of making pro-

vision for the discharge of the duties of the office during such absence. C. P. A. 1858.

36. The judge of the Court of Probate shall have and exercise, over proctors, solicitors, and attornies practising in the said court, the like authority and control as is now exercised by the judges of any court of equity or common law over persons practising therein as solicitors or attornies. The judge to have the same powers over practitioners as judges of other courts.

37. When any requisition shall issue in pursuance of section eighty-nine of "The Court of Probate Act, 1857," it shall be lawful for the commissioners of her Majesty's treasury, out of such monies as may be provided and appropriated by parliament for that purpose, to cause to be paid all such expenses attending the arranging, classification, indexing, carriage, or otherwise connected with the removal of the documents or books required by such requisition to be removed, as the judge shall from time to time certify to the said commissioners to be proper and necessary. Provision for expenses of indexing, &c. documents required to be removed under requisition.

38. In citing the act of the twentieth and twenty-first Victoria, chapter seventy-seven, in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Court of Probate Act, 1857," and in citing this act, the expression "Court of Probate Act, 1858." Short title of act.

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21 & 22 Vict. c. 56.

An Act to amend the Law relating to the Confirmation of Executors in Scotland, and to extend over all parts of the United Kingdom the Effect of such Confirmation, and of Grants of Probate and Administration. 21 & 22 Vict. c. 56.

[23rd July, 1858.]

Whereas it is expedient to amend the law relating to the confirmation of executors in Scotland, and to extend over the United Kingdom the effect of such confirmation, and of grants of probate and administration: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. From and after the twelfth day of November, one thousand eight hundred and fifty-eight, the practice of raising edicts of executry before the commissary courts in Scotland, for the decerniture of executors to deceased persons, shall Practice of raising edicts of executry to cease.

21 & 22 Vict. c. 56.

cease, and it shall not be competent to any person to obtain himself decerned executor in virtue of any such edict raised subsequently to the date aforesaid.

Petition to commissary to be substituted.

2. From and after the date aforesaid every person desirous of being decerned executor of a deceased person as disponee, next of kin, creditor, or in any other character whatsoever now competent, or of having some other person, possessed of such character, decerned executor to a deceased person, shall, instead of applying, as heretofore, for an edict of executry from the commissary, present a petition to the commissary for the appointment of an executor, which petition shall be in the form as nearly as may be of the Schedule (A.) hereunto annexed, and shall be subscribed by the petitioner or by his agent.

Form of petition as in Schedule (A.).

To whom petition to be presented.

3. Such petition shall be presented to the commissary of the county wherein the deceased died domiciled, and in the case of persons dying domiciled furth of Scotland, or without any fixed or known domicile, having personal or moveable property in Scotland, to the commissary of Edinburgh.

Mode of intimating petition.

4. Every such petition, in place of being published at the kirk door and market cross, as edicts of executry have been in use to be published, shall be intimated by the commissary clerk fixing on the door of the commissary court house, or in some conspicuous place of the court and of the office of the commissary clerk, in such manner as the commissary may direct, a full copy of the petition, and by the keeper of the record of edictal citations at Edinburgh inserting in a book, to be kept by him for that purpose, the names and designations of the petitioner and of the deceased person, the place and date of his death, and the character in which the petitioner seeks to be decerned executor, which particulars the keeper of the record of edictal citations shall cause to be printed and published weekly, along with the abstracts of the petitions for general and special services, in the form of Schedule (B.) hereunto annexed; provided always, that to enable the keeper of the record of edictal citations to make such publication, the commissary clerk shall transmit to him the said particulars, and to enable the commissary clerk to grant the certificate after mentioned, the keeper of the record of edictal citations shall transmit to the commissary clerk a copy, certified by the said keeper, of the printed and published particulars, all in such form and manner and on payment of such fees as the court of session by act of sederunt may direct.

Certificate of intimation of petition.

5. The commissary clerk, after receiving the certified copy of the printed and published particulars, shall forthwith certify on the petition that the same has been intimated and published, in terms of the provisions of this act, in the form of Schedule (C.) hereunto annexed, and such certificate shall be sufficient evi-

dence of the facts therein set forth: provided always, that where a second petition for confirmation is presented in reference to the same personal estate, the commissary shall direct intimation of such petition to be made to the party who presented the first petition. 21 & 22 Vict. c. 56. Additional intimation of petition in certain cases.

6. On the expiration of nine days after the commissary clerk shall have certified the intimation and publication of a petition for the appointment of an executor as aforesaid, the same may be called in court, and an executor decerned, or other procedure may take place, according to the forms now in use in case of edicts of executry, and with the like force and effect; and decree dative may be extracted on the expiration of three lawful days after it has been pronounced, but not sooner: provided always, that nothing herein contained shall alter or affect the law as to executors finding caution; and that bonds of caution for executors may be partly printed and partly written. Procedure on petition. Decree dative. Proviso as to caution.

7. Provided always, that nothing hereinbefore contained shall alter or affect the course of procedure now in use before the commissaries in confirmations of executors nominate. Not to affect present procedure.

8. Inventories of personal estates of deceased persons and relative testamentary writings may be given up and recorded in, and confirmations may be granted and issued by, any commissary court to which it is competent to apply in virtue of the provisions of this act for the appointment of an executor dative to the deceased. Where inventories, &c. may be recorded. Confirmations may be granted.

9. From and after the date aforesaid it shall be competent to include in the inventory of the personal estate and effects of any person who shall have died domiciled in Scotland any personal estate or effects of the deceased situated in England or in Ireland, or both: provided that the person applying for confirmation shall satisfy the commissary, and that the commissary shall by his interlocutor find that the deceased died domiciled in Scotland, which interlocutor shall be conclusive evidence of the fact of domicile: provided also, that the value of such personal estate and effects situated in England or Ireland respectively shall be separately stated in such inventory, and such inventory shall be impressed with a stamp corresponding to the entire value of the estate and effects included therein, wheresoever situated within the United Kingdom. Inventory may include personal estate in any part of United Kingdom.

10. Confirmations shall be in the form, or as nearly as may be in the form, of Schedules (D.) and (E.) hereunto annexed; and such confirmations shall have the same force and effect with the like writs framed in terms of the acts of sederunt passed on the twentieth December, one thousand eight hundred and twenty-three, and the twenty-fifth February, one thousand eight hundred and twenty-four, or at present in use. Form and effect of confirmations.

21 & 22 Vict. c. 56. Oaths, before whom to be taken.

11. Oaths and affirmations on inventories of personal estates given up to be recorded in any commissary court may be taken either before the commissary or his depute, or the commissary clerk or his depute, or before any commissioner appointed by the commissary, or before any magistrate or justice of the peace within the United Kingdom or the colonies, or any British consul.

Confirmation produced in Probate Court of England and sealed, to have the effect of probate or administration.

12. From and after the date aforesaid, when any confirmation of the executor of a person who shall in manner aforesaid be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in England, shall be produced in the principal court of probate in England, and a copy thereof deposited with the registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said court, and returned to the person producing the same, and shall thereafter have the like force and effect in England as if a probate or letters of administration, as the case may be, had been granted by the said court of probate.

Confirmation produced in Probate Court of Dublin, and sealed, to have the effect of probate or administration.

13. From and after the date aforesaid, where any confirmation of the executor of a person who shall so be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in Ireland, shall be produced in the court of probate in Dublin, and a copy thereof deposited with the registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said court, and returned to the person producing the same, and shall thereafter have the like force and effect in Ireland as if a probate or letters of administration, as the case may be, had been granted by the said court of probate in Dublin.

Probate or letters of administration produced in commissary court and certified, to have effect of confirmation.

14. From and after the date aforesaid, when any probate or letters of administration to be granted by the court of probate in England to the executor or administrator of a person who shall be therein, or by any note or memorandum written thereon signed by the proper officer, stated to have died domiciled in England, or by the court of probate in Ireland to the executor or administrator of a person who shall in like manner be stated to have died domiciled in Ireland, shall be produced in the commissary court of the county of Edinburgh, and a copy thereof deposited with the commissary clerk of the said court; the commissary clerk shall endorse or write on the back or face of such grant a certificate in the form as near as may be of the Schedule (F.) hereunto annexed; and such pro-

bate or letters of administration, being duly stamped, shall be of the like force and effect and have the same operation in Scotland as if a confirmation had been granted by the said court. 21 & 22 Vict. c. 56.

15. In any of the aforesaid cases where the deceased person shall be stated in or upon the probate or letters of administration to have been domiciled in England or in Ireland, as the case may be, such probate or letters of administration shall, for the purpose of securing the payment of the full and proper stamp duties, be deemed and considered to be granted for and in respect of the whole of the personal and moveable estate and effects of the deceased in the United Kingdom, within the meaning of the act of parliament passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, and of all other Acts of Parliament granting or relating to stamp duties on probates and letters of admininstration in England and Ireland respectively; and the affidavit required by law to be made on applying for probate or letters of administration in England or Ireland as to the value of the estate and effects of the deceased; and also where the commissary shall in manner aforesaid find that the deceased was domiciled in Scotland, the inventory required by law to be exhibited and recorded in the proper commissary court in Scotland before obtaining confirmation, or intermitting with or entering upon the possession or management of the personal or moveable estate or effects of the deceased in Scotland, shall respectively extend to and include the whole of the personal and moveable estate of the deceased person in the United Kingdom, and the value thereof; and the stamp duties for the time being chargeable on probates and letters of administration and on inventories respectively shall be chargeable upon any probate or letters of administration to be granted, and any inventory to be exhibited and recorded as aforesaid respectively, for and in respect of the whole of the personal and moveable estate and effects of the deceased in the United Kingdom and the value thereof; and the said affidavit shall also separately specify the value of the said estate and effects in Scotland. For securing the stamp duties, probates, &c. to be deemed granted for all the property in the United Kingdom. Inventory to include all such property.

16. For the purpose aforesaid, and also for granting relief where too high a stamp duty shall have been paid on any such probate or letters of administration, or inventory, the provisions contained in sections forty, forty-one, forty-two, and forty-three, of the said act passed in the fifty-fifth year of his Majesty King George the Third relating to probates and letters of administration granted in England, and the like provisions in the act passed in the fifty-sixth year of the said king, chapter fifty-six, relating to probates and letters of administration granted in Ireland, and the provisions contained in Provisions of former acts to apply to the probates, letters of administration, and inventories mentioned in this act.

21 & 22 Vict. c. 56.

the act passed in the forty-eighth year of the said king, chapter one hundred and forty-nine, relating to inventories in Scotland, and also all other provisions contained in the said acts respectively, or in any other act or acts relating to probates and letters of administration and inventories respectively, shall apply to the probates and letters of administration, to which effect is given by this act, and to the whole of the personal and moveable estate of the deceased for or in respect of which the same shall, in pursuance of this act, be deemed to be granted, wheresoever situate in the United Kingdom; and also to the inventories in which the whole of the personal and moveable estate of the deceased, wheresoever situate in the United Kingdom, ought, in pursuance of this act, to be included, in as full and ample a manner as if all such provisions were herein enacted in reference to such probates, letters of administration, and inventories respectively.

Affidavit as to domicile to be made on applying for probate or administration.

17. Provided, that in any case where, on applying for probate or letters of administration, it shall be required to be stated as aforesaid that the deceased was domiciled in England or in Ireland, the affidavit so as aforesaid required by law shall specify the fact according to the deponent's belief, which shall be sufficient to authorize the same to be so stated in or upon the probate or letters of administration: provided also, that any such statement, and the interlocutor of the commissary finding that the deceased was domiciled in Scotland, shall be evidence, and have effect for the purposes of this act only.

Acts of sederunt to be passed for following out purposes of this act.

18. It shall be competent to the court of session, and they are hereby authorized and required from time to time, to pass such acts of sederunt as shall be necessary and proper for regulating in all respects the proceedings under this act before the commissary of Edinburgh and other commissaries in Scotland, and following out the purposes of this act, and also the fees to be paid to agents before the said courts, and to the commissary clerks and other officers of court, and the expense of publication of petitions.

Former acts of sederunt repealed if inconsistent with this act.

19. All former acts, and acts of sederunt made in virtue thereof, so far as inconsistent with the present act, are hereby repealed; and this act may be amended or repealed by any act to be passed during the present session of parliament, and may be cited as the "Confirmation and Probate Act, 1858."

Interpretation of terms.

20. The word "commissary" shall include commissary depute, and the term "commissary clerk" shall include commissary clerk depute.

SCHEDULES to which the foregoing Act refers. 21 & 22 Vict. c. 56.

SCHEDULE (A.)

Form of a Petition for Appointment of an Executor to a deceased Person.

Unto the honourable the commissary of [*specify the county*], the petition of A. B. [*here name and design the petitioner*];

Humbly showeth,

That the late C. D. [*here name and design the deceased person to whom an executor is sought to be appointed*] died at [*specify place*] on or about the [*specify date*], and had at the time of his death his ordinary or principal domicile in the county of [*specify county or* "furth of Scotland," *or* "without any fixed domicile," *or* "without any known domicile," *as the case may be.*]

That the petitioner is the only son and next of kin [*or state what other relationship, character, or title the petitioner has, giving him right to apply for the appointment of executor*].

May it therefore please your Lordship to decern the petitioner executor dative quà next of kin to the said C. D. [*or state the other character in which the petitioner claims to be appointed executor*].

According to justice, &c.

[*Signed by the petitioner or his agent.*]

SCHEDULE (B.)

Roll of Petitions for the Appointment of Executors in Commissary Courts in Scotland.

County.	Name and Designation of Petitioner.	Title of Petitioner.	Name and Designation of Defunct.	Place and Date of Death.
Edinburgh.	*A. B.*, Writer in Edinburgh.	Next of Kin.	*C. D.*, Merchant in Edinburgh.	No.-, George St., Edinburgh, 1st January, 1857.

SCHEDULE (C.)

Form of Certificate by Commissary Clerk of Publication of a Petition for the Appointment of an Executor.

I, A. B., commissary clerk [*or* "commissary clerk depute," *as the case may be*], of the county of [*specify county*], hereby certify that this petition was intimated by affixing a copy thereof on the door of the court-house [*if some other place has been directed by the commissary specify it*], on the [*specify date*], and by being published by the keeper of the record of edictal citations at Edinburgh, in the printed roll of petitions for the appointment of executors in the Commissary Courts of Scotland, printed and published on [*specify date*].

A. B.

SCHEDULE (D.)

Form of a Testament Dative or Confirmation of the Executor of a Person who has died without naming one.

I, A. B., commissary of the county of [*specify county*], considering that by my decree, dated [*specify date*], I decerned C. D. executor dative quà

21 & 22 Vict. c. 56.

next of kin [*or other character, as the case may be*], of the late E. F. who died at [*specify place*], on [*specify date*], and seeing that the said C. D. has since given up on oath an inventory of the personal estate and effects of the said E. F. at the time of his death situated in Scotland [*or* situated in Scotland and England, *or* in Scotland and Ireland, *or* in Scotland, England, and Ireland, *as the case may be*], amounting in value to pounds, which inventory has been recorded in my Court books of date [*specify date*], and that he has likewise found caution for his acts and intromissions as executor: therefore I, in her Majesty's name and authority, make, constitute, ordain and confirm the said C. D. executor dative quà [*specify character*] to the defunct, with full power to him to uplift, receive, administer, and dispose of the said personal estate and effects, and grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of executor dative quà [*specify character*] is known to belong; providing always, that he shall render just count and reckoning for his intromissions therewith when and where the same shall be legally required.

Given under the seal of office of the commissariot of [*specify county*], and signed by the clerk of Court at [*specify place*], the [*specify date*].

To be signed by the commissary clerk or his depute, and sealed with the seal of office.

SCHEDULE (E.)

Form of a Testament Testamentar or Confirmation of an Executor Nominate.

I, A. B., commissary of the county of [*specify county*], considering that the late C. D. died at [*specify place*], upon [*specify date*], and that by his last will [*or other writing containing the nomination of executor*], dated [*specify date*], and recorded in my Court books upon [*specify date*], the said C. D. nominated and appointed E. F. to be his executor, and that the said E. F. has given up on oath an inventory of the personal estate and effects of the said C. D. at the time of his death situated in Scotland [*or* situated in Scotland and England, *or* situated in Scotland and Ireland, *or* situated in Scotland, England, and Ireland, *as the case may be*], amounting in value to pounds, which inventory has likewise been recorded in my Court books of date [*specify date*]: therefore I, in her Majesty's name and authority, ratify, approve, and confirm the nomination of executor contained in the aforesaid last will [*or other writing containing the nomination of executor*]; and I give and commit to the said E. F. full power to uplift, receive, administer, and dispose of the said personal estate and effects, grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of an executor nominate is known to belong; providing always, that he shall render just count and reckoning for his intromissions therewith when and where the same shall be legally required.

Given under the seal of office of the commissariot of [*specify county*], and signed by the clerk of Court at [*specify place*], the [*specify date*].

To be signed by the commissary clerk or his depute, and sealed with the seal of office.

SCHEDULE (F.)

I, A. B., commissary clerk [*or* commissary clerk depute] of the county of Edinburgh, hereby certify that this grant of probate has [*or* these letters of administration have] been produced in the Commissary Court of the said county, and that a copy thereof has been deposited with me.

22 Vict. c. 30.

An Act to amend the Confirmation and Probate Act, 1858. [19th April, 1859.] 22 Vict. c. 30.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Persons, &c. making payments upon confirmations and probates under Act, 1858, to be indemnified.

1. All persons and corporations who, in reliance upon any instrument purporting to be a confirmation granted under "The Confirmation and Probate Act, 1858," and all persons and corporations who, in reliance upon any such instrument which may be sealed under the authority of the said act with the seal of the Principal Court of Probate in England or of the Court of Probate in Dublin, and all persons or corporations who, in reliance upon any instrument purporting to be a probate or letters of administration granted by the Court of Probate in England or Court of Probate in Dublin, and having endorsed or written thereon a certificate by the commissary clerk of Edinburgh, in the form in the said Confirmation and Probate Act prescribed, shall have made or permitted to be made, or shall make or permit to be made, any payment or transfer bonâ fide upon any such confirmation, probate or letters of administration, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such confirmation, probate or letters of administration.

Short title.

2. This act may be cited as "The Confirmation and Probate Amendment Act, 1859."

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24 & 25 Vict. c. 114.

An Act to amend the Law with respect to Wills of Personal Estate made by British Subjects. [6th August, 1861.] 24 & 25 Vict. c. 114.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Wills made out of the kingdom to be admitted if made according to the law of the place where made.

1. Every will and other testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland

24 & 25 Vict. c. 114.

to confirmation, if the same be made according to the forms required either by the law of the place where the same was made or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of her Majesty's dominions where he had his domicile of origin.

Wills made in the kingdom to be admitted if made according to local usage.

2. Every will and other testamentary instrument made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made.

Change of domicile not to invalidate will.

3. No will or other testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Nothing in this act to invalidate wills otherwise made.

4. Nothing in this act contained shall invalidate any will or other testamentary instrument as regards personal estate which would have been valid if this act had not been passed, except as such will or other testamentary instrument may be revoked or altered by any subsequent will or testamentary instrument made valid by this act.

Extent of act.

5. This act shall extend only to wills and other testamentary instruments made by persons who die after the passing of this act.

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24 & 25 Vict. c. 121.

24 & 25 Vict. c. 121.

An Act to amend the law in relation to the Wills and Domicile of British Subjects dying whilst resident abroad, and of Foreign Subjects dying whilst resident within her Majesty's Dominions. [6th August, 1861.]

Whereas by reason of the present law of domicile the wills of British subjects dying whilst resident abroad are often defeated, and their personal property administered in a manner contrary to their expectations and belief; and it is desirable to amend such law, but the same cannot be effectually done without the consent and concurrence of foreign states: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords

Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

24 & 25 Vict. c. 121.

No British subject dying in a foreign country to be deemed to have acquired a domicile unless resident there for one year immediately preceding his or her death, &c., and for all purposes of testate or intestate succession shall retain the domicile possessed at the time of going to reside in such foreign country.

1. Whenever her Majesty shall by convention with any foreign state agree that provisions to the effect of the enactments herein contained shall be applicable to the subjects of her Majesty and of such foreign state respectively, it shall be lawful for her Majesty by any order in council to direct, and it is hereby enacted, that from and after the publication of such order in the London Gazette no British subject resident at the time of his or her death in the foreign country named in such order shall be deemed under any circumstances to have acquired a domicile in such country unless such British subject shall have been resident in such country for one year immediately preceding his or her decease, and shall also have made and deposited in a public office of such foreign country (such office to be named in the order in council) a declaration in writing of his or her intention to become domiciled in such foreign country; and every British subject dying resident in such foreign country, but without having so resided and made such declaration as aforesaid, shall be deemed for all purposes of testate or intestate succession as to moveables to retain the domicile he or she possessed at the time of his or her going to reside in such foreign country as aforesaid.

No foreign subject dying in Great Britain or Ireland to be deemed to have acquired a domicile unless resident therein for one year immediately preceding his or her death, &c.

2. After any such convention as aforesaid shall have been entered into by her Majesty with any foreign state it shall be lawful for her Majesty by order in council to direct, and from and after the publication of such order in the London Gazette it shall be and is hereby enacted, that no subject of any such foreign country who at the time of his or her death shall be resident in any part of Great Britain or Ireland shall be deemed under any circumstances to have acquired a domicile therein, unless such foreign subject shall have been resident within Great Britain or Ireland for one year immediately preceding his or her decease, and shall also have signed, and deposited with her Majesty's secretary of state for the home department, a declaration in writing of his or her desire to become and be domiciled in England, Scotland, or Ireland, and that the law of the place of such domicile shall regulate his or her moveable succession.

Who this act shall not apply to.

3. This act shall not apply to any foreigners who may have obtained letters of naturalization in any part of her Majesty's dominions.

When subjects of foreign states shall die in her Majesty's dominions, and there

4. Whenever a convention shall be made between her Majesty and any foreign state, whereby her Majesty's consuls or vice-consuls in such foreign state shall receive the same or the like powers and authorities as are hereinafter expressed, it shall be lawful for her Majesty by order in council to direct, and from and after the publication of such order in the

24 & 25 Vict. c. 121.

shall be no persons to administer to their estates, the consuls of such foreign states may administer.

London Gazette it shall be and is hereby enacted, that whenever any subject of such foreign state shall die within the dominions of her Majesty, and there shall be no person present at the time of such death who shall be rightfully entitled to administer to the estate of such deceased person, it shall be lawful for the consul, vice-consul, or consular agent of such foreign state within that part of her Majesty's dominions where such foreign subject shall die, to take possession and have the custody of the personal property of the deceased, and to apply the same in payment of his or her debts and funeral expenses, and to retain the surplus for the benefit of the persons entitled thereto; but such consul, vice-consul, or consular agent shall immediately apply for and shall be entitled to obtain from the proper court letters of administration of the effects of such deceased person, limited in such manner and for such time as to such court shall seem fit.

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33 Vict. c. 14.

33 Vict. c. 14. *An Act to amend the Law relating to the Legal Condition of Aliens and British Subjects.* [12th May, 1870.]

Whereas it is expedient to amend the law relating to the legal condition of aliens and British subjects: Be it enacted as follows:

Short title.

1. This act may be cited for all purposes as "The Naturalization Act, 1870."

Status of Aliens in the United Kingdom.

Capacity of an alien as to property.

2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject: Provided—

(1.) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise:

(2.) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him:

(3.) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this act, or in pursuance of an devolution by law on the death of any person dying before the passing of this act. 33 Vict. c. 14.

Power of naturalized aliens to divest themselves of their status in certain cases.

3. Where her majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for her majesty, by order in council, to declare that such convention has been entered into by her majesty; and from and after the date of such order in council, any person being originally a subject or citizen of the state referred to in such order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows; that is to say,—If the declarant be in the united kingdom, in the presence of any justice of the peace; if elsewhere in her majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of her majesty's dominions, in the presence of any officer in the diplomatic or consular service of her majesty.

How British-born subject may cease to be such.

4. Any person who by reason of his having been born within the dominions of her majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign state a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of her majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

Alien not entitled to jury de medietate linguæ.

5. From and after the passing of this act, an alien shall not be entitled to be tried by a jury de medietate linguæ, but shall be triable in the same manner as if he were a natural-born subject.

33 Vict. c. 14.

Expatriation.

Capacity of British subject to renounce allegiance to her majesty.

6. Any British subject who has at any time before, or may at any time after the passing of this act, when in any foreign state and not under any disability voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state be deemed to have ceased to be a British subject and be regarded as an alien: Provided,—

(1.) That where any British subject has before the passing of this act voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this act, make a declaration that he is desirous of remaining a British subject, and upon such declaration hereinafter referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect:

(2.) A declaration of British nationality may be made, and the oath of allegiance be taken as follows; that is to say,—if the declarant be in the united kingdom, in the presence of a justice of the peace; if elsewhere in her majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of her majesty's dominions, in the presence of any officer in the diplomatic or consular service of her majesty.

Naturalization and Resumption of British Nationality.

Certificate of naturalization.

7. An alien who, within such limited time before making the application hereinafter mentioned as may be allowed by one of her majesty's principal secretaries of state, either by general order or on any special occasion, has resided in the united kingdom for a term of not less than five years; or has

been in the service of the crown for a term of not less than five years, and intends, when naturalized, either to reside in the united kingdom, or to serve under the crown, may apply to one of her majesty's principal secretaries of state for a certificate of naturalization. 33 Vict. c. 14.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such secretary of state may require. The said secretary of state, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate, as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

Political, &c. rights of certificated alien.

An alien to whom a certificate of naturalization is granted shall in the united kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the united kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said secretary of state may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this act may apply to the secretary of state for a certificate of naturalization under this act, and it shall be lawful for the said secretary of state to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the united kingdom.

Certificate of re-admission to British nationality.

8. A natural-born British subject who has become an alien in pursuance of this act and is in this act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of her majesty's principal secretaries of state for a certificate

33 Vict. c. 14.

hereinafter referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said secretary of state shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this act conferred on the secretary of state in the united kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the united kingdom.

Form of oath of allegiance.

9. The oath in this act referred to as the oath of allegiance shall be in the form following; that is to say,

"I do swear that I will be faithful and bear true allegiance to her majesty Queen Victoria, her heirs and successors, according to law. So help me God."

National Status of Married Women and Infant Children.

National status of married women and infant children.

10. The following enactments shall be made with respect to the national status of women and children:

(1.) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject:

(2.) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this act:

(3.) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this act, every child of such father or mother who during infancy has

become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject: 33 Vict. c. 14.

(4.) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother shall be deemed to have resumed the position of a British subject to all intents:

(5.) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the united kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the united kingdom shall be deemed to be a naturalized British subject.

Supplemental Provisions.

Regulations as to registration.

11. One of her majesty's principal secretaries of state may by regulation provide for the following matters:—

(1.) The form and registration of declarations of British nationality:

(2.) The form and registration of certificates of naturalization in the united kingdom:

(3.) The form and registration of certificates of re-admission to British nationality:

(4.) The form and registration of declarations of alienage:

(5.) The registration by officers in the diplomatic or consular service of her majesty of the births and deaths of British subjects who may be born or die out of her majesty's dominions, and of the marriages of persons married at any of her majesty's embassies or legations:

(6.) The transmission to the united kingdom for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this act out of the united kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the united kingdom in pursuance of or for the purpose of carrying into effect the provisions of this act:

33 Vict. c. 14.

(7.) With the consent of the treasury, the imposition and application of fees in respect of any registration authorized to be made by this act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this act:

The said secretary of state, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said secretary of state in pursuance of this section shall be deemed to be within the powers conferred by this act, and shall be of the same force as if it had been enacted in this act, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

Regulations as to evidence.

12. The following regulations shall be made with respect to evidence under this act:—

(1.) Any declaration authorized to be made under this act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of her majesty's principal secretaries of state, or by any person authorized by regulations of one of her majesty's principal secretaries of state to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned:

(2.) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of her majesty's principal secretaries of state, or by any person authorized by regulations of one of her majesty's principal secretaries of state to give certified copies of such certificate:

(3.) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of her majesty's principal secretaries of state, or by any person authorized by regulations of one of her majesty's principal secretaries of state to give certified copies of such certificate:

(4.) Entries in any register authorized to be made in pur-

suance of this act shall be proved by such copies and certified in such manner as may be directed by one of her majesty's principal secretaries of state, and the copies of such entries shall be evidence of any matters by this act or by any regulation of the said secretary of state authorized to be inserted in the register: 33 Vict. c. 14.

(5.) "The Documentary Evidence Act, 1868," shall apply to any regulation made by a secretary of state, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

Miscellaneous.

Saving of letters of denization.

13. Nothing in this act contained shall affect the grant of letters of denization by her majesty.

Saving as to British ships.

14. Nothing in this act contained shall qualify an alien to be the owner of a British ship.

Saving of allegiance prior to expatriation.

15. Where any British subject has in pursuance of this act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

Power of colonies to legislate with respect to naturalization.

16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by her majesty in the same manner and subject to the same rules in and subject to which her majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

Definition of terms.

17. In this act, if not inconsistent with the context or subject-matter thereof,—

"Disability" shall mean the status of being an infant, lunatic, idiot, or married woman:

"British possession" shall mean any colony, plantation, island, territory, or settlement within her majesty's dominions, and not within the united kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this act:

"The governor of any British possession" shall include any person exercising the chief authority in such possession:

"Officer in the diplomatic service of her majesty" shall mean any ambassador, minister, or chargé d'affaires, or secretary of legation, or any person appointed by such ambassador, minister, chargé d'affaires, or secretary of

33 Vict. c. 14.

legation to execute any duties imposed by this act on an officer in the diplomatic service of her majesty:

"Officer in the consular service of her majesty" shall mean and include consul-general, consul, vice-consul, and consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul, and consular agent.

Repeal of Acts mentioned in Schedule.

Repeal of acts.

18. The several acts set forth in the first and second parts of the schedule annexed hereto shall be wholly repealed, and the acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; provided that the repeal enacted in this act shall not affect—

(1.) Any right acquired or thing done before the passing of this act:

(2.) Any liability accruing before the passing of this act:

(3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the passing of this act:

(4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

NOTE.—Reference is made to the repeal of the "whole act" where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous acts.

This schedule, so far as respects acts prior to the reign of George the second, other than acts of the Irish parliament, refers to the edition prepared under the direction of the Record Commission, intituled "The Statutes of the Realm; printed by command of his Majesty King George the third, in pursuance of an Address of the House of Commons of Great Britain. From original Records and authentic Manuscripts."

PART I.

ACTS WHOLLY REPEALED OTHER THAN ACTS OF THE IRISH PARLIAMENT.

Date.	Title.
7 Jas. 1, c. 2	An act that all such as are to be naturalized or restored in blood shall first receive the Sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy.
11 Will. 3, c. 6*.... *11 & 12 Will. 3. (Ruff.)	An act to enable his Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.

Date.	Title.
13 Geo. 2, c. 7.	An act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of his Majesty's Colonies in America.
20 Geo. 2, c. 44.	An act to extend the provisions of an act made in the thirteenth year of his present Majesty's reign, intituled "An act for naturalizing foreign Protestants and others therein mentioned, as are settled or shall settle in any of his Majesty's Colonies in America, to other foreign Protestants who conscientiously scruple the taking of an Oath."
13 Geo. 3, c. 25.	An act to explain two acts of parliament, one of the thirteenth year of the reign of his late Majesty, "for naturalizing such foreign Protestants and others, as are settled or shall settle in any of his Majesty's Colonies in America;" and the other of the second year of the reign of his present Majesty, "for naturalizing such foreign Protestants as have served or shall serve as Officers or Soldiers in his Majesty's Royal American Regiment, or as Engineers in America."
14 Geo. 3, c. 84.	An act to prevent certain inconveniences that may happen by bills of naturalization.
16 Geo. 3, c. 52.	An act to declare his Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.
6 Geo. 4, c. 67	An act to alter and amend an act passed in the seventh year of the reign of his Majesty King James the first, intituled "An Act that all such as are to be Naturalized or Restored in Blood shall first receive the Sacrament of the Lord's Supper and the Oath of Allegiance and the Oath of Supremacy."
7 & 8 Vict. c. 66	An act to amend the laws relating to aliens.
10 & 11 Vict. c. 83.	An act for the naturalization of aliens.

Part II.

[Acts of the Irish Parliament wholly repealed.]

Part III.

Acts partially repealed.

		Extent of repeal.
4 Geo. 1, c. 9 (Act of Irish Parliament.)	An act for reviving, continuing, and amending several statutes made in this kingdom heretofore temporary.	So far as it makes perpetual the act of 2 Anne, c. 14.
6 Geo. 4, c. 50	An act for consolidating and amending the laws relative to jurors and juries.	The whole of sect. 47.
3 & 4 Will. 4, c. 91.	An act consolidating and amending the laws relating to jurors and juries in Ireland.	The whole of sect. 37.

36 & 37 Vict. c. 52.

36 & 37 Vict. c. 52.

An Act for the Relief of Widows and Children of Intestates where the personal Estate is of small value.

[28th July, 1873.]

"Whereas many poor persons die intestate, possessed of property of small amount, and it is desirable to increase the facilities for taking out letters of administration to their estates and effects, and to reduce the expenses attending the same:" Be it enacted as follows:

For purposes of act application may be made to a registrar of a county court.

1. Where the whole estate and effects of an intestate shall not exceed in value the sum of one hundred pounds, his widow or any one or more of his children, provided such widow or children respectively shall reside at a distance exceeding three miles from the registry of the Court of Probate having jurisdiction in the matter, may apply to the registrar of the county court within the district of which the intestate had his fixed place of abode at the time of his death, and the said registrar shall fill up the usual papers required by the Court of Probate to lead to a grant of letters of administration of the estate and effects of the said intestate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the Court of Probate, and shall then transmit the said papers by post to the registrar of the Court of Probate having jurisdiction in the matter, who shall in due course make out and seal the letters of administration of the estate and effects of the said intestate, and transmit them by post to the said registrar of the county court, to be by him delivered to the party so applying for the same, without the payment of any fee for the same save as is provided by this act.

Identity of person may be required.

2. The registrar of the county court may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

Registrar may refuse to take affidavit.

3. If the registrar of the county court has reason to believe that the whole estate and effects of which the intestate died possessed exceeds in value one hundred pounds, he shall refuse to proceed with the application until he is satisfied as to the real value thereof.

Registrars may exercise powers of commissioners of Court of Probate.

4. All registrars of county courts shall for the purposes of this act have power and are hereby authorized to administer oaths, and to take declarations and affirmations, and to exercise any other powers which can be exercised by commissioners of the Court of Probate. In the necessary absence of the registrar of the county court, applicants may be sworn and execute any necessary documents at the office of the said registrar before any commissioner of the Court of Probate.

5. Any rules and orders and tables of fees requisite for carrying this act into operation shall be framed and may from time to time be altered by the judge of the Court of Probate, subject as regards the tables of fees to the approval of the commissioners of her Majesty's treasury; and such proportions of the said fees as the said judge, with such approval as aforesaid, shall think proper, may be made payable to the registrars of the county courts acting in the said matters, but the total amount to be charged to applicants shall not in any one case exceed the sums mentioned in the schedule to this act. 36 & 37 Vict. c. 52. Power to frame rules, orders, &c.

6. Provided always that nothing herein contained shall be construed to affect any duty now payable on letters of administration. Not to affect duty on administration.

7. [Application of act to Ireland.]

SCHEDULE.

Where the whole estate and effects of the intestate shall not exceed in value twenty pounds, the sum of five shillings; and where the whole estate and effects shall exceed in value twenty pounds, the sum of five shillings, and the further sum of one shilling for every ten pounds or fraction of ten pounds by which the value shall exceed twenty pounds.

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39 & 40 Vict. c. 59.

An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords; and for other Purposes. [11th August, 1876.] 39 & 40 Vict. c. 59.

BE IT ENACTED, as follows:

Preliminary.

1. This act may be cited for all purposes as "The Appellate Jurisdiction Act, 1876." Short title.

2. This act shall, except where it is otherwise expressly provided, come into operation on the 1st day of November, 1876, which day is hereinafter referred to as the commencement of this act. Commencement of act.

Appeal.

3. Subject as in this act mentioned an appeal shall lie to the House of Lords from any order or judgment of any of the Courts following; that is to say, Appeal to house of lords.

(1.) Of her Majesty's Court of Appeal in England; and England.

39 & 40 Vict. c. 59.

Scotland.

(2.) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this act lay to the House of Lords by common law or by statute; and

Ireland.

(3.) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this act lay to the House of Lords by common law or by statute.

Form of appeal to house of lords.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

Quorum and description of "lords of appeal."

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this act designated lords of appeal; that is to say,

(1.) The lord chancellor of Great Britain for the time being; and

(2.) The lords of appeal in ordinary to be appointed as in this act mentioned; and

(3.) Such peers of parliament as are for the time being holding or have held any of the offices in this act described as high judicial offices.

Appointment of two "lords of appeal in ordinary."

6. For the purpose of aiding the House of Lords in the hearing and determination of appeals, her Majesty may, at any time after the passing of this act, by letters patent appoint two qualified persons to be lords of appeal in ordinary, but such appointment shall not take effect until the commencement of this act.

Qualification.

A person shall not be qualified to be appointed by her Majesty a lord of appeal in ordinary unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices in this act described as high judicial offices, or has been at or before such time as aforesaid, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland.

Removal.

Every lord of appeal in ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the crown, but he may be removed from such office on the address of both houses of parliament.

Salary.

There shall be paid to every lord of appeal in ordinary a salary of six thousand pounds a year.

Every lord of appeal in ordinary, unless he is otherwise entitled to sit as a member of the House of Lords, shall by virtue and according to the date of his appointment be entitled during his life to rank as a baron by such style as her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a lord of appeal in ordinary, and no longer, be entitled to a writ of summons to attend, and to sit and vote in the House of Lords; his dignity as a lord of parliament shall not descend to his heirs. 39 & 40 Vict. c. 59. To rank as baron for life, but to sit and vote in House of Lords during tenure of office only.

On any lord of appeal in ordinary vacating his office, by death, resignation or otherwise, her Majesty may fill up the vacancy by the appointment of another qualified person.

A lord of appeal in ordinary shall, if a privy councillor, be a member of the judicial committee of the privy council, and, subject to the due performance by a lord of appeal in ordinary of his duties as to the hearing and determining of appeals in the House of Lords, it shall be his duty, being a privy councillor, to sit and act as a member of the judicial committee of the privy council. Lord of appeal in ordinary, being privy councillor, to sit on judicial committee.

Supplemental Provisions.

7. Her Majesty may, by letters patent, grant to any lord of appeal in ordinary, who has served for fifteen years, or is disabled by permanent infirmity from the performance of the duties of his office, a pension by way of annuity to be continued during his life equal in amount to the pension which might under similar circumstances be granted to the master of the rolls, in pursuance of "The Supreme Court of Judicature Act, 1873." Pension of lord of appeal in ordinary.

Previous service in any office, described in this act as a high judicial office, shall for the purposes of pension be deemed equivalent to service in the office of a lord of appeal in ordinary under this act.

The salary and pension payable to a lord of appeal in ordinary shall be charged on and paid out of the consolidated fund of the United Kingdom, and shall accrue due from day to day, and shall be payable to the person entitled thereto, or to his executors and administrators, at such intervals in every year, not being longer than three months, as the treasury may from time to time determine.

8. For preventing delay in the administration of justice, the House of Lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of lords of appeal in ordinary taking their seats and the oaths, during any prorogation of parliament, at such time and in such manner as may be appointed by order of the House of Lords made Hearing appeals during prorogation of parliament.

39 & 40 Vict. c. 59.

during the preceding session of parliament; and all orders and proceedings of the said house in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and lords of appeal in ordinary taking their seats and the oaths as aforesaid, shall be transacted by such house during such prorogation.

Any order of the House of Lords may, for the purposes of this act, be made at any time after the passing of this act.

Hearing of appeals during dissolution of parliament.

9. If on the occasion of a dissolution of parliament, her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination of appeals during such dissolution, it shall be lawful for her Majesty, by writing under her sign manual, to authorize the lords of appeal, in the name of the House of Lords, to hear and determine appeals during the dissolution of parliament, and for that purpose to sit in the House of Lords at such times as may be thought expedient; and upon such authority as aforesaid being given by her Majesty, the lords of appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the House of Lords, and may in the name of the House of Lords exercise the jurisdiction of the House of Lords accordingly.

Fiat of attorney-general.

10. An appeal shall not be entertained by the House of Lords without the consent of the attorney-general or other law officer of the crown in any case where proceedings in error or on appeal could not hitherto have been had in the House of Lords without the fiat or consent of such officer.

Procedure. Standing orders.

11. After the commencement of this act error shall not lie to the House of Lords, and an appeal shall not lie from any of the courts from which an appeal to the House of Lords is given by this act, except in manner provided by this act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

Scotland and Ireland.

12. Except in so far as may be authorized by orders of the House of Lords an appeal shall not lie to the House of Lords from any court in Scotland or Ireland in any case, which, according to the law or practice hitherto in use, could not have been reviewed by that house, either in error or on appeal.

Pending business in

13. Nothing in this act contained shall affect the jurisdiction of the House of Lords in respect of any error or appeal pending

therein at the time of the commencement of this act, and any such error or appeal may be heard and determined, and all proceedings in relation thereto may be conducted in the same manner in all respects as if this act had not passed. 39 & 40 Vict. c. 59. house of lords.

Amendment of Acts.

14. Whereas by the act of the session of the thirty-fourth and thirty-fifth years of the reign of her present Majesty, chapter ninety-one, intituled "An Act to make further provision for the despatch of business by the Judicial Committee of the Privy Council," her Majesty was empowered to appoint and did appoint four persons qualified as in that act mentioned to act as members of the judicial committee of the privy council at such salaries as are in the said act mentioned, in this act referred to as paid judges of the judicial committee of the privy council: Amendment of "Judicial Committee Act, 1871."

And whereas the power given by the said act of filling any vacancy occasioned by death, or otherwise, in the offices of the persons so appointed, has lapsed by efflux of time, and her Majesty has no power to fill any such vacancies:

Be it enacted, that whenever any two of the paid judges of the judicial committee of the privy council have died or resigned, her Majesty may appoint a third lord of appeal in ordinary in addition to the lords of appeal in ordinary hereinbefore authorized to be appointed, and on the death or resignation of the remaining two paid judges of the judicial committee of the privy council her Majesty may appoint a fourth lord of appeal in ordinary in addition to the lords of appeal in ordinary aforesaid; and may from time to time fill up any vacancies occurring in the offices of such third and fourth lord of appeal in ordinary. Appointment of two additional lords of appeal in ordinary on vacancy in office of paid judges of judicial committee.

Any lord of appeal in ordinary appointed in pursuance of this section shall be appointed in the same manner, hold his office by the same tenure, be entitled to the same salary and pension, and in all respects be in the same position as if he were a lord of appeal in ordinary appointed in pursuance of the power in this act before given to her Majesty.

Her Majesty may, by order in council, with the advice of the judicial committee of her Majesty's privy council, or any five of them, of whom the lord chancellor shall be one, and of the archbishops and bishops being members of her Majesty's privy council, or any two of them, make rules for the attendance, on the hearing of ecclesiastical cases, as assessors of the said committee, of such number of the archbishops and bishops of the church of England as may be determined by such rules. Ecclesiastical assessors of judicial committee.

39 & 40 Vict. c. 59.

The rules may provide for the assessors being appointed for one or more year or years, or by rotation or otherwise, and for filling up any temporary or other vacancies in the office of assessor.

Submission of rules to parliament.

Any rule made in pursuance of this section shall be laid before each house of parliament within forty days after it is made, if parliament be then sitting, or, if not then sitting, within forty days after the commencement of the then next session of parliament.

If either house of parliament present an address to her Majesty within forty days after any such rule has been laid before such house, praying that any such rule may be annulled, her Majesty may thereupon, by order in council, annul the same, and the rule so annulled shall thenceforth become void, but without prejudice nevertheless to the making of any other rule in its place, or to the validity of anything which may in the meantime have been done under any such rule.

Appointment of three additional ordinary judges of court of appeal.

15. Whereas it is expedient to amend the constitution of her Majesty's court of appeal in manner hereinafter mentioned: be it enacted, that there shall be repealed so much of the fourth section of "The Supreme Court of Judicature Act, 1875," as provides that the ordinary judges of her Majesty's court of appeal (in this act referred to as "the Court of Appeal") shall not exceed three at any one time.

In addition to the number of ordinary judges of the court of appeal authorized to be appointed by "The Supreme Court of Judicature Act, 1875," her Majesty may appoint three additional ordinary judges of that court.

The first three appointments of additional judges under this act shall be made by such transfer to the court of appeal as is in this section mentioned of three judges of the high court of justice, and the vacancies so created in the high court of justice shall not be filled up, except in the event and to the extent hereinafter mentioned.

First three appointments to be by transfer of three judges from high court.

Her Majesty may by writing, under her sign manual, either before or after the commencement of this act, but so as not to take effect until the commencement thereof, transfer to the court of appeal from the following divisions of the high court of justice, that is to say, the Queen's bench division, the common pleas division, and the exchequer division, such of the judges of the said divisions, not exceeding three in number, as to her Majesty may seem meet, each of whom shall have been a judge of any one or more of such divisions for not less than two years previously to his appointment, and shall not be an ex-officio judge of the court of appeal, and every judge so transferred shall be deemed an additional ordinary judge of the court of appeal in the same manner as if he had

been appointed such judge by letters patent. No judge shall be so transferred without his own consent. 39 & 40 Vict. c. 59.

Every additional ordinary judge of the said court of appeal appointed in pursuance of this act shall be subject to the provisions of sections twenty-nine and thirty-seven of "The Supreme Court of Judicature Act, 1873," and shall be under an obligation to go circuits, and to act as commissioner under commissions of assize, or other commissions authorized to be issued in pursuance of the said act, in the same manner in all respects as if he were a judge of the high court of justice. Obligation of additional ordinary judges to go circuit, &c.

There shall be paid to every additional ordinary judge appointed in pursuance of this act, in addition to the salary which he would otherwise receive as an ordinary judge of the court of appeal, such sum on account of his expenses on circuit or under such commission as aforesaid as may be approved by the treasury upon the recommendation of the lord chancellor.

Each of the judges of the high court of justice who is in pursuance of this act transferred to the court of appeal, by writing under the sign manual of her Majesty, shall retain such officers as are attached to his person as such judge, and are appointed and removable by him at his pleasure, in pursuance of "The Supreme Court of Judicature Act, 1873," and the officers so attached shall have the same rank, and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and if entitled to pensions be entitled to the same pensions, and shall, as nearly as may be, perform the same duties as if the judges to whom they are attached had not been transferred to the court of appeal. Officers of additional ordinary judges.

Subject as aforesaid, the provisions of "The Supreme Court of Judicature Acts, 1873 and 1875," for the time being in force in relation to the appointment of ordinary judges of her Majesty's court of appeal, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to such judges, and all other provisions relating to such ordinary judges, shall apply to the additional ordinary judges appointed in pursuance of this section in the same manner as they apply to the other ordinary judges of the said court. Further appointments, &c.

For the purpose of a transfer to the court of appeal under this section, service as a judge in a court whose jurisdiction is transferred to the high court shall be deemed to have been service as a judge in any one or more of such divisions of the high court as are in this section in that behalf mentioned; and for the purpose of the pension of any person appointed under this act an additional ordinary judge of appeal, service in the high court of justice, or in any court whose jurisdiction is transferred to the high court of justice or to the court of

39 & 40 Vict. c. 59.

appeal, shall be deemed to have been service in the court of appeal.

Orders in relation to conduct of business in court of appeal.

16. Orders for constituting and holding divisional courts of the court of appeal, and for regulating the sittings of the court of appeal, and of the divisional courts of appeal, may be made, and when made, in like manner rescinded or altered, by the president of the court of appeal, with the concurrence of the ordinary judges of the court of appeal, or any three of them; and so much of section seventeen of "The Supreme Court of Judicature Act, 1875," as relates to the regulation of any matters subject to be regulated by orders under this section, and so much of any rules of court as may be inconsistent with any order made under this section, shall be repealed, without prejudice nevertheless to any rules of court made in pursuance of the section so repealed, so long as such rules of court remain unaffected by orders made in pursuance of this section.

Disposal of business in high court before single judge.

17. On and after the 1st day of December, 1876, every action and proceeding in the high court of justice, and all business arising out of the same, except as is hereinafter provided, shall, so far as is practicable and convenient, be heard, determined, and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the court of appeal, shall, so far as is practicable and convenient, be had and taken before the judge before whom the trial or hearing of the cause took place: provided nevertheless, that divisional courts of the high court of justice may be held for the transaction of any business which may for the time being be ordered by rules of court to be heard by a

Divisional courts.

divisional court, and any such divisional court when held shall be constituted of two judges of the court and no more, unless the president of the division to which such divisional court belongs, with the concurrence of the other judges of such division, or a majority thereof, is of opinion that such divisional court should be constituted of a greater number of judges than two, in which case such court may be constituted of such number of judges as the president, with such concurrence as aforesaid, may think expedient; nevertheless the decisions of a divisional court shall not be invalidated by reason of such court being constituted of a greater number than two judges; and

All future rules of court to be made by committee of judges.

Rules of court for carrying into effect the enactments contained in this section shall be made on or before the 1st day of December, 1876, and may be afterwards altered, and all rules of court to be made after the passing of this act, whether made under "The Supreme Court of Judicature Act,

1875," or this act, shall be made by any three or more of the following persons, of whom the lord chancellor shall be one, namely, the lord chancellor, the lord chief justice of England, the master of the rolls, the lord chief justice of the common pleas, the lord chief baron of the exchequer, and four other judges of the supreme court of judicature, to be from time to time appointed for the purpose by the lord chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and all such rules of court shall be laid before each house of parliament within such time and subject to be annulled in such manner as is provided by "The Supreme Court of Judicature Act, 1875." 39 & 40 Vict. c. 59.

There shall be repealed on and after the 1st day of December, 1876, so much of sects. 40, 41, 42, 43, 44, and 46 of "The Supreme Court of Judicature Act, 1873," as is inconsistent with the provisions of this section. Partial repeal of ss. 40—44 and s. 46 of Act of 1873.

18. Whenever any two of the said paid judges of the judicial committee of the privy council have died or resigned, her majesty may, upon an address from both houses of parliament, representing that the state of business in the high court of justice is such as to require the appointment of an additional judge, fill up one of the vacancies created by the transfer hereinbefore authorized, by appointing one new judge of the said high court in any division thereof; and on the death or retirement of the remaining two paid judges of the said judicial committee, her majesty may, upon the like address, fill up in like manner another of the said vacancies, and from time to time fill up any vacancies occurring in the offices of judges so appointed. Power to fill vacancies in high court caused by removal of judges to court of appeal.

19. Where a judge of the high court of justice has been requested to attend as an additional judge at the sittings of the court of appeal under section four of "The Supreme Court of Judicature Act, 1875," such judge shall, although the period has expired during which his attendance was requested, attend the sittings of the court of appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the court of appeal during his attendance on the court of appeal. Attendance of judges of high court on court of appeal.

20. Where by act of parliament it is provided that the decision of any court or judge the jurisdiction of which court or judge is transferred to the high court of justice is to be final, an appeal shall not lie in any such case from the decision of the high court of justice, or of any judge thereof, to her majesty's court of appeal. Abolition of appeal from high court in cases of statutory finality.

21. Whereas by section thirty-four of the "Supreme Court of Judicature Act, 1875," it is enacted that upon the occurrence of any vacancy in an office coming within the provisions of section seventy-seven of the "Supreme Court of Judicature Suspension until January, 1878, of power to fill up vacancies

39 & 40 Vict. c. 59. in legal offices.

Act, 1873," the lord high chancellor of Great Britain may, with the concurrence of the treasury, suspend the making any appointment to such office for any period not later than the 1st day of January, 1877, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office, and it is expedient to extend the said period as hereinafter mentioned: be it therefore enacted as follows:

The said section shall be construed as if the 1st day of January, 1878, were therein inserted in lieu of the 1st day of January, 1877.

Appointment of deputy by district registrar.

22. A district registrar of the supreme court of judicature may from time to time, but in each case with the approval of the lord chancellor and subject to such regulations as the lord chancellor may from time to time make, appoint a deputy, and all acts authorized or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed: provided always, that in no case such appointment shall be made for a period exceeding three months. This section shall come into force at the time of the passing of this act.

Appointment of vice-admiral, judge, and officers of vice-admiralty court.

23. Whereas by the "Vice-Admiralty Courts Act, 1863," it is enacted, that "nothing in this act contained shall be taken to affect the power of the admiralty to appoint any vice-admiral, or any judge, registrar, marshal, or other officer of any vice-admiralty court, as heretofore, by warrant from the admiralty, and by letters patent issued under the seal of the high court of admiralty of England:"

And whereas since the commencement of the "Supreme Court of Judicature Acts, 1873 and 1875," doubts have arisen with respect to the exercise of the said power of the admiralty, and it is expedient to remove such doubts: be it therefore enacted as follows:

Any power of the admiralty to appoint or cancel the appointment of a vice-admiral, or a judge, registrar, marshal, or other officer of a vice-admiralty court, may, after the passing of this act, be exercised by some writing under the hands of the admiralty, and the seal of the office of admiralty, and in such form as the admiralty from time to time direct.

Every appointment so made shall have the same effect, and every vice-admiral, judge, registrar, marshal, and other officer so appointed shall have the same jurisdiction, power, and authority, and be subject to the same obligation, as if he had been appointed before the commencement of the "Supreme Court of Judicature Acts, 1873 and 1875," under the seal of the High Court of Admiralty of England.

"Admiralty" in this section means the lord high admiral,

or the commissioners for executing his office, or any two of such commissioners. 39 & 40 Vict. c. 59.

Repeal and Definitions.

Repeal of certain sections of the Church Discipline Act and of the Supreme Court of Judicature Acts.

24. Section sixteen of the act for better enforcing church discipline, passed in the session of the third and fourth years of the reign of her present Majesty, chapter eighty-six and sections twenty, twenty-one, and fifty-five of the "Supreme Court of Judicature Act, 1873," and section two of the "Supreme Court of Judicature Act, 1875," shall be repealed (with the exception of so much of section two as declares the day on which that act is to commence).

Definitions.

25. In this act, if not inconsistent with the context, the following expressions have the meaning hereinafter respectively assigned to them; that is to say,

High judicial office.

"High judicial office" means any of the following offices; that is to say,

> The office of lord chancellor of Great Britain or Ireland, or of paid judge of the judicial committee of the privy council, or of judge of one of her Majesty's superior Courts of Great Britain and Ireland:

Superior courts.

"Superior Courts of Great Britain and Ireland" means and includes,—

> As to England, her Majesty's High Court of Justice and her Majesty's Court of Appeal, and the superior Courts of law and equity in England as they existed before the constitution of her Majesty's High Court of Justice; and
> As to Ireland, the superior Courts of law and equity at Dublin; and
> As to Scotland, the Court of Session:

Error.

"Error" includes a writ of error or any proceedings in or by way of error.

39 & 40 Vict. c. 70.

39 & 40 Vict. c. 70.

An Act to alter and amend the Law relating to the Administration of Justice in Civil Causes in the Ordinary Sheriff Courts in Scotland, and for other purposes relating thereto.

[15th August, 1876.]

Note in confirmation by sheriff, clerk, or commissary clerk, that deceased died domiciled in Scotland substituted for certified copy interlocutor by the sheriff commissary and to have like effect.

41. Where, under the provisions of the ninth and subsequent sections of the act passed in the twenty-first and twenty-second years of the reign of her present Majesty, chapter fifty-six, intituled "An Act to amend the law relating to the confirmation of executors in Scotland, and to extend over all parts of the United Kingdom the effect of such confirmation and of grants of probate and administration," it shall be desired to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view to his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland; and sections twelve and thirteen of the said act, so far as they make it a condition of the sealing of a confirmation in the principal court of probate in England or in the court of probate in Dublin, that the copy of the confirmation provided to be deposited with the registrar shall be accompanied by such a certified copy interlocutor, are hereby repealed.

Extension of the provisions of ss. 12 and 13 of 21 & 22 Vict. c. 56.

42. When an additional inventory has been given in and recorded and confirmation granted in a sheriff court in Scotland of estate situated in England or Ireland of a person who died domiciled in Scotland, and the additional confirmation shall be produced in the principal court of probate in England, or in the court of probate in Dublin, as the case may be, and a copy thereof deposited with the registrar of the court, such additional confirmation shall be sealed with the seal of the court and returned to the person producing the same, and that whether the original confirmation shall have been sealed with the seal of the court or not, and although the additional inventory confirmed shall not contain any estate of the deceased situated in Scotland, and such addi-

tional confirmation when so sealed shall thereafter have the same force and effect as if probate or letters of administration, as the case may be, had been granted by the court of probate in which it had been sealed. 39 & 40 Vict. c. 70.

Confirmation of Scotch estate with note of trust funds in England or Ireland to be sealed in probate courts as if it contained English or Irish estate of the deceased.

43. When any confirmation or additional confirmation of personal estate situated in Scotland, which shall contain or have appended thereto and signed by the sheriff clerk a note or statement of funds in England or Ireland, or both, held by the deceased in trust, shall be produced in the principal court of probate in England or in the court of probate in Dublin, as the case may be, such confirmation shall be sealed with the seal of such court in the same manner as is provided by sections twelve and thirteen of the act passed in the twenty-first and twenty-second years of the reign of her present Majesty, chapter fifty-six, as amended by this act, with respect to sealing confirmations which include personal estate situated in England or Ireland respectively; and such confirmation shall thereafter have the like force and effect in England and Ireland with respect to such funds as if probate or letters of administration, as the case may be, had been granted by the court of probate in which it had been sealed; and such note or statement may be inserted or appended as aforesaid by the sheriff clerk, provided the same shall have been set forth in any inventory which has been recorded in the books of the court of which he is clerk.

Schedule C. of 21 & 22 Vict. c. 56, hereby repealed, and new form of intimation, &c.

44. The sheriff clerk shall, after a petition for the appointment of an executor has been intimated by him as provided by section four of the act passed in the twenty-first and twenty-second years of the reign of her present Majesty, chapter fifty-six, and after receiving the certified copy of the printed and published particulars therein set forth, forthwith certify these facts on the petition in the following or similar terms: "Intimated and published in terms of the statute," which certificate (in lieu of the certificate in the form of schedule C. annexed to the said act, which schedule C. is hereby repealed,) shall be dated and signed by him, and shall be sufficient evidence of the facts therein set forth: Provided always, that special intimation shall be made to all executors already decerned or confirmed to a deceased person of any subsequent petition for the appointment of an executor which may be presented with reference to the personal estate of the same deceased person.

A calendar of confirmations and inventories to be published annually.

45. It shall be the duty of the commissary clerk of Edinburgh, on or before the thirty-first day of December one thousand eight hundred and seventy-seven, and on or before the thirty-first day of December in every year thereafter, to prepare and issue a printed calendar containing a list or register, alphabetically arranged, of all confirmations granted,

39 & 40 Vict. c. 70.

and of all inventories given in, in cases in which from any cause confirmation shall not have been required in Scotland, in the year ending on the thirty-first day of December immediately preceding, specifying in each case the name and designation, and the place and date of death of the person deceased; whether he died testate or intestate; the names and designations of his executors; date of confirmation or recording of inventory; the date of the will or deed, if any; and where and of what date the same was registered; and the value of the estate: provided as follows:

(1.) It shall be the duty of every sheriff clerk to furnish to the commissary clerk of Edinburgh on or before the fifteenth day of February one thousand eight hundred and seventy-seven such a list or register of confirmations granted, and inventories given in, within the sheriffdom of which he is such clerk (with all the particulars above specified) in the year ending on the thirty-first day of December immediately preceding; and thereafter quarterly, on or before the first days of February, May, August and November in each year, to furnish to the commissary clerk of Edinburgh such a list or register, with such particulars as aforesaid, of all confirmations and inventories granted, or given in, within such sheriffdom in the quarters ending on the thirty-first day of December, the thirty-first day of March, the thirtieth day of June, and the thirtieth day of September immediately preceding respectively:

(2.) A copy of every such calendar issued shall be sent by the commissary clerk of Edinburgh to every sheriff clerk in Scotland, who shall keep the same in his office open for the inspection of the public on payment of such fee as may be fixed by act of sederunt, which the Court of Session are hereby authorised and required to pass:

(3.) A copy of every issue of such calendar shall also be sent to the lord clerk register and to the registrars in the Probate Courts of London and Dublin:

(4.) The cost of preparing and printing and issuing such calendar and of furnishing copies thereof to the persons to whom they are herein directed to be sent shall be defrayed out of moneys to be voted by parliament.

CUSTOMS AND INLAND REVENUE ACT, 1881.

44 Vict. c. 12.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue.

[3rd June, 1881.]

Part III.

Stamps.

As to Probate and Legacy Duties, and Duties on Accounts.

Stamp duties to be under the care and management of the Commissioners of Inland Revenue.

26. (1.) The stamp duties hereinafter imposed shall be under the care and management of the commissioners of inland revenue, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are by law vested in them for the collection, recovery, and management of any stamp duties, and shall have all other powers and authorities requisite for carrying into effect the provisions of this act in relation to such stamp duties.

(2.) Such stamp duties may be denoted by impressed or adhesive stamps, or partly by impressed stamps and partly by adhesive stamps, as the said commissioners may think proper.

Duty stamp.

(3.) As respects the duties imposed on affidavits in substitution for the duties on probates or letters of administration, the several provisions now in force in relation to the last-mentioned duties shall, so far as the same are consistent with the provisions of this act, be deemed to be applicable to the said duties hereby imposed, and in the application thereof a probate or letters of administration having thereon such a certificate as is hereinafter mentioned shall for all purposes be deemed to have been duly stamped in respect of the value stated in the certificate.

Certificate.

Grant of duties in respect of probate and letters of administration and on inventories.

27. The duties imposed by the Customs and Inland Revenue Act, 1880, upon probates of wills and letters of administration in England and Ireland shall not be payable upon probates or letters of administration granted *on and after the first day of June one thousand eight hundred and eighty-one;* and on and after that day in substitution for such duties, and in lieu of the duties imposed by the said act upon inventories in Scot-

land, there shall, save as is hereinafter expressly provided, be charged and paid on the affidavit to be required and received from the person applying for the probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland, the stamp duties hereinafter specified; (that is to say,)

	Duty.
Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted, or whereof the inventory is to be exhibited and recorded, exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially, shall be above the value of 100*l.*, and not above the value of 500*l.* -	At the rate of one pound for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multipule of 50*l.*;
Where such estate and effects shall be above the value of 500*l.*, and not above the value of 1,000*l.* - - - -	At the rate of one pound five shillings for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;
Where such estate and effects shall be above the value of 1,000*l.* - - - -	At the rate of three pounds for every full sum of 100*l.*, and for any fractional part of 100*l.* over any multiple of 100*l.*;

Provided that an additional inventory, to be exhibited or recorded in Scotland, of any effects of a deceased person, where a former inventory of the estate and effects of the same person has been exhibited and recorded prior to the *first day of June one thousand eight hundred and eighty-one*, shall be chargeable with the amount of stamp duty with which it would have been chargeable if this act had not been passed.

Power to deduct debts and funeral expenses

28. *On and after the first day of June one thousand eight hundred and eighty-one*, in the case of a person dying domiciled in any part of the united kingdom, it shall be lawful

for the person applying for the probate or letters of administration in England or Ireland, or exhibiting the inventory in Scotland, to state in his affidavit the fact of such domicile, and to deliver therewith or annex thereto a schedule of the debts due from the deceased to persons resident in the united kingdom, and the funeral expenses, and in that case, for the purpose of the charge of duty on the affidavit or inventory, the aggregate amount of the debts and funeral expenses appearing in the schedule shall be deducted from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit, or whereof the inventory shall be exhibited.

where deceased died domiciled in the united kingdom.

Debts to be deducted under the power hereby given shall be debts due and owing from the deceased and payable by law out of any part of the estate and effects comprised in the affidavit or inventory, and are not to include voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been bonâ fide delivered to the donee thereof three months before the death of the deceased, or debts in respect whereof any real estate may be primarily liable or a reimbursement may be capable of being claimed from any real estate of the deceased or from any other estate or person.

Debts which may be so deducted.

Funeral expenses to be deducted under the power hereby given shall include only such expenses as are allowable as reasonable funeral expenses according to law.

Funeral expenses.

29. The affidavit to be required or received from any person applying for probate or letters of administration in England or Ireland shall extend to the verification of the account of the estate and effects, or to the verification of such account and the schedule of debts and funeral expenses, as the case may be, and shall be in accordance with such form as may be prescribed by the commissioners of her Majesty's treasury; and the commissioners of inland revenue shall provide forms of affidavit stamped to denote the duties payable under this act.

As to forms of affidavit.

Duty stamp to be on affidavit.

30. No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, or by the Probate and Matrimonial Division of the High Court of Justice in Ireland, unless the same bear a certificate (*a*) in writing under the hand of the proper officer of the court, showing that the affidavit for the commissioners of inland revenue has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.

Probate or letters of administration to bear a certificate in lieu of stamp duty.

31. If at any time after the grant of probate or letters of administration, and during the administration of the estate,

Provision for return of duty overpaid.

the value mentioned in the certificate of the officer of the court shall be found to exceed the true value of the personal estate and effects of the deceased, or if at any time within three years after the grant, or within such further period as the commissioners of inland revenue may allow, it shall appear that no amount or an insufficient amount was deducted on account of debts and funeral expenses, it shall be lawful for the said commissioners, upon proof of the facts to their satisfaction, to return the amount of stamp duty which shall have been overpaid, and to cause a certificate to be written by an authorized officer on the probate or letters of administration setting forth such true value, or, as the case may be, the amount, or corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the court.

Provision for payment of further duty.

32. If at any time it shall be discovered that the personal estate and effects of the deceased were at the time of the grant of probate or letters of administration of greater value than the value mentioned in the certificate, or that any deduction for debts or funeral expenses was made erroneously, the person acting in the administration of such estate and effects shall, within six months after the discovery, deliver a further affidavit with an account to the commissioners of inland revenue, duly stamped for the amount which, with the duty (if any) previously paid on an affidavit in respect of such estate and effects, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the said commissioners interest upon such amount at the rate of five pounds per centum per annum from the date of the grant, or from such subsequent date as the said commissioners may in the circumstances think proper.

The commissioners of inland revenue, upon the receipt of such affidavit duly stamped as aforesaid, shall cause a certificate to be written by an authorized officer on the probate or letters of administration setting forth the true value of the estate and effects as then ascertained, or, as the case may be, the corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the court.

Provisions as to obtaining probate, &c. where gross value of estate does not exceed 300*l.*

33. (1.) Where the whole personal estate and effects of any person dying *on or after the first day of June one thousand eight hundred and eighty-one* (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty, and any personal estate and effects situate out of the united kingdom), *without any deduction for debts or funeral expenses*, shall not exceed the value of three hundred pounds, it shall be lawful for the person* intending to apply

*Application

for probate or letters of administration in England or Ireland, to deliver to the proper officer of the court or to any officer of inland revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of fifteen shillings for fees of court and expenses, and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty. can be made in person, or through a solicitor.

(2.) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of three hundred pounds, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

(3.) The principal registrars of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the commissioners of inland revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of inland revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary, so as to authorize the grant of probate or letters of administration.

(4.) Officers of inland revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept the same on behalf of the president or judge of the Division.

(5.) Where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the affidavit for the commissioners of inland revenue shall be the fixed duty of thirty shillings, and no more.

Provision as to inventories where gross value of estate does not exceed 300*l.* 39 & 40 Vict. c. 24. 39 & 40 Vict. c. 70.

34. (1.) The Intestates, Widows, and Children (Scotland) Act, 1875, and the Small Testate Estate (Scotland) Act, 1876, as amended by the Sheriffs Court (Scotland) Act, 1876, shall be extended so as to apply to any case where the whole personal estate and effects of a person dying *on or after the first day of June one thousand eight hundred and eighty-one*, without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, whoever may be the applicant for representation, and wheresoever the deceased may have been domiciled at the time of death, and the fees payable under schedule C. of each of the two first-mentioned acts shall not exceed the sum of fifteen shillings, inclusive of the fee of two shillings and sixpence, to be paid to the commissary clerk, or sheriff clerk.

(2.) In any such case where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the inventory shall be the fixed duty of thirty shillings, and no more.

Provision in case of subsequent discovery that the value of estate exceeded 300*l*.

35. Where representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole personal estate and effects of the deceased were of a value exceeding three hundred pounds, then a sum equal to the stamp duty payable on an affidavit or inventory in respect of the true value of such estate and effects shall be a debt due to her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.

Relief from legacy duty in cases under 300*l*.

36. The payment of the sum of thirty shillings for the fixed duty on the affidavit or inventory in conformity with this act shall be deemed to be in full satisfaction of any claim to legacy duty or succession duty in respect of the estate or effects to which such affidavit or inventory relates.

Power to commissioners to require explanations and proof in support of affidavit or inventory.

37. It shall be lawful for the commissioners of inland revenue at any time and from time to time within three years after the grant of probate or letters of administration or recording of inventory, as they may think necessary, to require the person acting in the administration of the estate and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of, or particulars verified by, the affidavit or inventory as the case may seem to them to require.

Grant of duties on accounts of certain property.

38. (1.) Stamp duties at the like rates as are by this act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or moveable property to be included therein according to the value thereof.

(2.) The personal or moveable property to be included in an account shall be property of the following descriptions, viz.:—

(a) Any property taken as a donatio mortis causâ made by any person dying on or before the first day of June one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been bonâ fide made three months before the death of the deceased.

(b) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be

transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(c) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3.) Where an account delivered duly stamped comprises property passing under a voluntary settlement, and, upon the production of the settlement, it shall appear that the stamp duty of five shillings per centum has been paid thereon according to the amount or value of the property so passing, or any part thereof, the amount of such stamp duty shall be returned to the person delivering the account.

Delivery of accounts on oath.

39. Every person who as beneficiary, trustee, or otherwise, acquires possession, or assumes the management, of any personal or moveable property of a description to be included in an account according to the preceding section shall upon retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased deliver to the commissioners of inland revenue a full and true account, verified by oath, of such property duly stamped as required by this act. Any officer authorised by the commissioners for the purpose may administer the oath.

Officers of the Inland Revenue duly authorized may administer oaths.

Double duty payable in case of default.

40. If any person who ought to obtain probate or letters of administration or deliver a further affidavit or to exhibit an inventory or who is required to deliver such account as aforesaid shall neglect to do so within the period prescribed by law for the purpose, he shall be liable to pay to her majesty double the amount of duty chargeable, and the same shall be a debt due from him to the crown, and be recoverable by any of the ways or means now in force for the recovery of probate, legacy or succession duties.

Cesser of legacy and succession duties at the rate of one per cent. in certain cases.

41. In respect of any legacy, residue, or share of residue payable out of, or consisting of any estate or effects according to the value whereof duty shall have been paid on the affidavit or inventory or account, in conformity with this act, the duty at the rate of one pound per centum imposed by the act

of the fifty-fifth year of king George the third, chapter one hundred and eighty-four, shall not be payable;

And in respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this act, the duty at the rate of one pound per centum imposed by the Succession Duty Act, 1853, shall not be payable.

16 & 17 Vict. c. 51.

Charge of legacy duty on legacies not amounting to 20*l.*

42. Subject to the relief from legacy duty given by section thirteen of the Customs and Inland Revenue Act, 1880, every pecuniary legacy or residue or share of residue under the will or the intestacy of a person dying on or after the first day of June one thousand eight hundred and eighty-one, although not of an amount or value of twenty pounds, shall be chargeable to the duties imposed by the said act of the fifty-fifth year of king George the third, chapter one hundred and eighty-four, as modified by this act.

Power to commissioners to accept composition for legacy duty under a will.

43. It shall be lawful for the commissioners of inland revenue, upon the application of the person acting in the execution of the will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof legacy duty is payable, together with the names or description of class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for legacy duty under such will.

If the commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given.

The SCHEDULE.

Session and Chapter.	Title of Act.	Extent of Repeal.
30 & 31 Vict. c. 23.	An Act to grant and alter certain Duties of Customs and Inland Revenue, and for other purposes relating thereto.	Sections five and six, and Schedule E.

The foregoing act provides that the Duty Stamp for probate and administration shall be affixed to the Inland Revenue Affidavit, so that in future no grant of probate

or administration will have impressed upon it the Duty Stamp as heretofore.

In cases of double probate, cessate and de bonis grants, though the free mark will have to be obtained as previously explained (*ante*, p. 301), the stamp or free mark will appear on the Inland Revenue Affidavit.

It will be observed that the provision of the 33rd section of this act, whereby—where the whole of the estate in England and abroad exceeds 100*l.*, but does not exceed in value the sum of 300*l.*—the Court fees are fixed at 15*s.*, and the duty on such estates at 30*s.*, applies only to the administration of the effects of persons dying *on or after* 1*st June*, 1881.

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45 & 46 Vict. c. 75.

An Act to consolidate and amend the Acts relating to the Property of Married Women. [18th August, 1882.] 45 & 46 Vict. c. 75.

Whereas it is expedient to consolidate and amend the act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870)":

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Married woman to be capable of holding property and of contracting as a feme sole.

1.—(1.) A married woman shall, in accordance with the provisions of this act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party

45 & 46 Vict. c. 75.

to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole.

Property of a woman married after the act to be held by her as a feme sole.

2. Every woman who marries after the commencement of this act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Execution of general power.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this act.

Property acquired after the act by a woman married before the act to be held by her as a feme sole.

5. Every woman married before the commencement of this act shall be entitled to have and to hold, and to dispose of in manner aforesaid as her separate property, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this act, including

any wages, earnings, money, and property so gained or acquired by her as aforesaid. 45 & 46 Vict. c. 75.

As to stock, &c. to which a married woman is entitled.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the commissioners for the reduction of the national debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the governor and company of the Bank of England, or of any other bank, which at the commencement of this act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the governor and company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *primâ facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the postmaster-general, the commissioners for the reduction of the national debt, the governor and company of the Bank of England, the governor and company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

As to stock, &c. to be transferred, &c. to a married woman.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title

45 & 46 Vict. c. 75.

to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

Provided always, that nothing in this act shall require or authorise any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any act of parliament, charter, byelaw, articles of association, or deed of settlement regulating such corporation or company.

Investments in joint names of married women and others.

8. All the provisions hereinbefore contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the commissioners for the reduction of the national debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

As to stock, &c. standing in the joint names of a married woman and others.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

Fraudulent investments with money of husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly,

benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the court may, upon an application under section seventeen of this act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this act had not passed. 45 & 46 Vict. c. 75.

Moneys payable under policy of assurance not to form part of estate of the insured.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trustee Act, 1850, or the acts amending and extending the same. The receipt of a trustee or trustees duly 13 & 14 Vict. c. 60.

45 & 46 Vict. c. 75.

appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

Remedies of married woman for protection and security of separate property.

12. Every woman, whether married before or after this act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

Wife's antenuptial debts and liabilities.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this act shall operate to increase or diminish the liability of any woman married before the commencement of this act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this act, and to

which she would not have been entitled for her separate use under the acts hereby repealed or otherwise, if this act had not passed. 45 & 46 Vict. c. 75.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this act contained shall operate to increase or diminish the liability of any husband married before the commencement of this act for or in respect of any such debt or other liability of his wife as aforesaid. Husband to be liable for his wife's debts contracted before marriage to a certain extent.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only. Suits for ante-nuptial liabilities.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to Act of wife liable to criminal proceedings.

45 & 46 Vict. c. 75.

criminal proceedings by the wife under this act, shall in like manner be liable to criminal proceedings by her husband.

Questions between husband and wife as to property to be decided in a summary way.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of certiorari or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

Married woman as an

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate

of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole. 45 & 46 Vict. c. 75. executrix or trustee.

19. Nothing in this act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. Saving of existing settlements, and the power to make future settlements.

20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent. Married woman to be liable to the parish for the maintenance of her husband. 31 & 32 Vict. c. 122.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this act shall relieve her husband Married woman to be liable to the parish for the maintenance of her children.

45 & 46 Vict. c. 75.

from any liability imposed upon him by law to maintain her children or grandchildren.

Repeal of 33 & 34 Vict. c. 93. 37 & 38 Vict. c. 50.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such acts was in force, or any right or liability of any husband or wife, married before the commencement of this act, to sue or be sued under the provisions of the said repealed acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this act.

Legal representative of married woman.

23. For the purposes of this act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

Interpretation of terms.

24. The word "contract" in this act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this act includes a thing in action.

Commencement of act.

25. The date of the commencement of this act shall be the first of January one thousand eight hundred and eighty-three.

Extent of act.

26. This act shall not extend to Scotland.

Short title.

27. This act may be cited as the Married Women's Property Act, 1882.

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49 & 50 Vict. c. 27.

49 & 50 Vict. c. 27.

An Act to amend the Law relating to the Guardianship and Custody of Infants. [25th June, 1886.]

Whereas it is expedient to amend the law relating to the guardianship and custody of infants:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows: 49 & 50 Vict. c. 27.

1. This act may be cited as the Guardianship of Infants Act, 1886. Short title.

2. On the death of the father of an infant, and in case the father shall have died prior to the passing of this act then from and after the passing of this act, the mother if surviving shall be the guardian of such infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the Court may, if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother. On death of father, mother to be guardian alone or jointly with others.

3.—(1.) The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such infant (if such infant be then unmarried), and where guardians are appointed by both parents they shall act jointly. Mother may appoint guardian, in certain cases.

(2.) The mother of any infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the court, after her death, if it be shown to the satisfaction of the court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians who shall thereupon be authorized and empowered so to act as aforesaid, or make such other order in respect of the guardianship as the court shall think right.

(3.) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the court for its direction, and the court may make such order or orders regarding the matters in difference as it shall think proper.

4. Every guardian in England and Ireland under this act shall have all such powers over the estate and the person, or over the estate (as the case may be), of an infant as any guardian appointed by will or otherwise now has in England under the act twelve Charles the Second, chapter twenty-four, or in Ireland under the act of the Irish parliament fourteen and fifteen Charles the Second, chapter nineteen, or otherwise. Powers of guardian.

5. The court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard Court may make orders as to custody.

49 & 50 Vict. c. 27.

to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just.

Power to court to remove guardian.

6. In England and Ireland the High Court of Justice, in any division thereof, and in Scotland either division of the Court of Session, may, in their discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this act, and may also, if they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

Guardianship in case of divorce or judicial separation.

7. In any case where a decree for judicial separation, or a decree either nisi or absolute for divorce, shall be pronounced, the court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and, in such case, the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children.

Application of act to Scotland.

8. In the application of this act to Scotland the word guardian shall mean tutor, and the word infant shall mean pupil.

Interpretation of terms.

9. In the construction of this act the expression "the court" shall mean—

In England the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside:

In Ireland the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside:

In Scotland the Court of Session or the sheriff court within whose jurisdiction the respondent or respondents or any of them may reside.

Any application under this act to the High Court of Justice in England or to the High Court of Justice in Ireland shall be made to the Chancery Division of the said Courts respectively in such manner as may be prescribed by rules of court.

In Scotland the expression "the Court of Session" shall mean either division of the said court, and in vacation the Lord Ordinary on the Bills.

As to re-

10. In England and Ireland when any application has been

made under this act to a county court the High Court of Justice shall, at the instance of any party to such application, order such application to be removed to the High Court of Justice and there proceeded with before a Judge of the Chancery Division, on such terms as to costs as it may think proper. 49 & 50 Vict. c. 27. moving proceedings and appeals.

In England and Ireland an appeal shall lie to the High Court of Justice from any order made by a county court under this act; and, subject to any rules of court made after the passing of this act, any such appeal shall be heard by a judge of the Chancery Division of the High Court of Justice at chambers or in court, as he shall direct.

In Scotland any application made under this act to a sheriff court may be removed to the Court of Session, at the instance of any party, in the manner provided by and subject to the conditions prescribed by the ninth section of the Sheriff Courts (Scotland) Act, 1877. 40 & 41 Vict. c. 50.

In Scotland an appeal shall lie to either division of the Court of Session from any order made by the Lord Ordinary on the Bills or a sheriff court under this act.

11. Rules for regulating the practice and procedure in any proceedings under this act, and the forms in such proceedings may from time to time be made— Rules as to procedure.

(a) So far as respects the High Court of Justice or Her Majesty's Court of Appeal in England or Ireland by rules of court; and

(b) So far as respects the Court of Session in Scotland by Act of Sederunt; and

(c) So far as respects any county court in England or Ireland and the Sheriff Court in Scotland in like manner as rules and orders respecting those courts can respectively for the time being be made.

12. In Scotland tutors being administrators-in-law, tutors-nominate, and guardians appointed or acting in terms of this act who shall, by virtue of their office, administer the estate of any pupil, shall be deemed to be tutors within the meaning of an act passed in the twelfth and thirteenth years of the reign of Her Majesty, intituled "An act for the better protection of the property of pupils, absent persons, and persons under mental incapacity, in Scotland," and shall be subject to the provisions thereof: Provided always, that such tutors being administrators-in-law, tutors-nominate, and guardians aforesaid shall not be bound to find caution in terms of the twenty-sixth and twenty-seventh sections of the last recited act, unless the court, upon the application of any party having interest, shall so direct. Tutors.

13. Nothing in this act contained shall restrict or affect the jurisdiction of the High Court of Justice in England, and of Saving clause.

49 & 50 Vict. c. 27.

the High Court of Justice in Ireland, or of any division of the said courts, and of the Court of Session in Scotland, to appoint or remove guardians, or (in the case of Scotland) tutors or factors loco tutoris or otherwise in respect of infants.

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53 & 54 Vict. c. 29.

53 & 54 Vict. c. 29.

An Act to amend the Law by making better provision for the Widows of certain Intestates in the distribution of such Intestates' Property. [25th July, 1890.]

Be it enacted as follows:

Intestate's estate not exceeding 500*l.* to belong to widow where no issue.

1. The real and personal estates of every man who shall die intestate after the first day of September one thousand eight hundred and ninety leaving a widow but no issue shall, in all cases where the net value of such real and personal estates shall not exceed five hundred pounds, belong to his widow absolutely and exclusively.

Intestate's estate exceeding 500*l.*, widow to have a charge for 500*l.*

2. Where the net value of the real and personal estates in the preceding section mentioned shall exceed the sum of five hundred pounds the widow of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal estates for such five hundred pounds, with interest thereon from the date of the death of the intestate at four per cent. per annum until payment.

How charge to be borne as between realty and personalty.

3. As between the real and personal representatives of such intestate, such charge shall be borne and paid in proportion to the values of the real and personal estates respectively.

Above provision to be in addition to share of residue.

4. The provision for the widow intended to be made by this act shall be in addition and without prejudice to her interest and share in the residue of the real and personal estates of such intestate remaining after payment of the sum of five hundred pounds, in the same way as if such residue had been the whole of such intestate's real and personal estates and this act had not been passed.

How realty to be valued.

5. The net value of such real estates as aforesaid shall for the purposes of this act be estimated in the case of a fee simple upon the basis of twenty years purchase of the annual value by the year at the date of the death of the intestate as determined by law for the purposes of property tax, less the gross amount of any mortgage or other principal sum charged thereon, and less the value of any annuity or other periodical payment chargeable thereon, to be valued according to the

tables and rules in the schedule annexed to the statute sixteenth and seventeenth Victoria, chapter fifty-one, and in the case of an estate for a life or lives according to the said tables and rules. 53 & 54 Vict. c. 29. [Succession Duties Act, 1853.]

6. The net value of such personal estate as aforesaid shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said personal estate shall be subject. How personalty to be valued.

7. This act may be cited as the Intestates' Estates Act, 1890. Short title.

8. This act shall not extend to Scotland. Extent of act.

COLONIAL PROBATES ACT, 1892.

55 Vict. c. 6.

An Act to provide for the Recognition in the United Kingdom of Probates and Letters of Administration granted in British Possessions. 55 Vict. c. 6.

Be it enacted as follows :—

1. Her Majesty the Queen may, on being satisfied that the legislature of any British possession has made adequate provision for the recognition in that possession of probates and letters of administration granted by the courts of the United Kingdom, direct by Order in Council that this act shall, subject to any exceptions and modifications specified in the order, apply to that possession, and thereupon, while the order is in force, this act shall apply accordingly. Application of act by order in council.

2.—(1.) Where a court of probate in a British possession to which this act applies has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, a court of probate in the United Kingdom, be sealed with the seal of that court, and, thereupon, shall be of the like force and effect and have the same operation in the United Kingdom as if granted by that court. Sealing in United Kingdom of colonial probates and letters of administration.

(2.) Provided that the court shall, before sealing a probate or letters of administration under this section, be satisfied—

(a) that probate duty has been paid in respect of so much (if any) of the estate as is liable to probate duty in the United Kingdom; and

55 Vict. c. 6.

(b) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property (if any) in the United Kingdom to which the letters of administration relate;

and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.

(3.) The court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in the United Kingdom.

(4.) For the purposes of this section, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

(5.) Rules of court may be made for regulating the procedure and practice, including fees and costs, in courts of the United Kingdom, on and incidental to an application for sealing a probate or letters of administration granted in a British possession to which this act applies. Such rules shall, so far as they relate to probate duty, be made with the consent of the Treasury, and subject to any exceptions and modifications made by such rules, the enactments for the time being in force in relation to probate duty (including the penal provisions thereof) shall apply as if the person who applies for sealing under this section were a person applying for probate or letters of administration.

Application of act to British courts in foreign countries.

3. This act shall extend to authorise the sealing in the United Kingdom of any probate or letters of administration granted by a British court in a foreign country, in like manner as it authorises the sealing of a probate or letters of administration granted in a British possession to which this act applies, and the provisions of this act shall apply accordingly with the necessary modifications.

Orders in council.

4.—(1.) Every Order in Council made under this act shall be laid before both Houses of Parliament as soon as may be after it is made, and shall be published under the authority of her Majesty's Stationery Office.

(2.) Her Majesty the Queen in Council may revoke or alter any Order in Council previously made under this act.

(3.) Where it appears to her Majesty in Council that the legislature of part of a British possession has power to make the provision requisite for bringing this act into operation in that part, it shall be lawful for her Majesty to direct by Order in Council that this act shall apply to that part as if it were a separate British possession, and thereupon, while the order is in force, this act shall apply accordingly.

Application

5. This act when applied by an Order in Council to a

British possession shall, subject to the provisions of the order, apply to probates and letters of administration granted in that possession either before or after the passing of this act. 55 Vict. c. 6. of act to probates, &c. already granted.

6. In this act— Definitions.

The expression "court of probate" means any court or authority, by whatever name designated, having jurisdiction in matters of probate, and in Scotland means the sheriff court of the county of Edinburgh :

The expressions "probate" and "letters of administration" include confirmation in Scotland, and any instrument having in a British possession the same effect which under English law is given to probate and letters of administration respectively :

The expression "probate duty" includes any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted :

The expression "British court in a foreign country" means any British court having jurisdiction out of the Queen's dominions in pursuance of an Order in Council, whether made under any act or otherwise.

7. This act may be cited as the Colonial Probates Act, 1892. Short title.

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52 Vict. c. 7.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. 52 Vict. c. 7.

[31st May, 1889.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This act may be cited as the Customs and Inland Revenue Act, 1889. Short title.

52 Vict. c 7.

PART I.

Customs and Excise.

Import duties on tea.

2. The duties of Customs now chargeable upon tea shall continue to be levied and charged on and after the first day of August one thousand eight hundred and eighty-nine, until the first day of August one thousand eight hundred and ninety, on the importation thereof into Great Britain or Ireland (that is to say):—

Tea, the pound.....Sixpence.

Increase of duty in respect of beer.

43 & 44 Vict. c. 20.

44 & 45 Vict. c. 12.

3.—(1.) The duty of excise imposed by section eleven of the Inland Revenue Act, 1880, and the duty of Customs imposed by section three of the Customs and Inland Revenue Act, 1881, in respect of beer by relation to worts of a specific gravity of one thousand and fifty-seven degrees, shall be charged, collected, levied, and paid on and after the sixteenth day of April one thousand eight hundred and eighty-nine in respect of beer by relation to worts of a specific gravity of one thousand and fifty-five degrees, and the said acts shall be read and construed as if the gravity of one thousand and fifty-five degrees were therein substituted for the gravity of one thousand and fifty-seven degrees wherever such last-mentioned gravity is therein referred to.

(2.) The provisions of section three of the Customs and Inland Revenue Act, 1881, with respect to the descriptions of beer called mum, spruce, or black beer shall extend to the description of beer called Berlin white beer, and other preparations, whether fermented or not fermented, of a character similar to mum, spruce, or black beer.

Alteration of duty on a vinegar maker's licence.

4. In lieu of the duties of excise payable on a licence to be taken out by every maker of vinegar or acetous acid for sale there shall be charged and paid from and after the fifth day of July one thousand eight hundred and eighty-nine the duty of one pound.

PART II.

Stamps.

Estate Duty.

Estate duty on personal property passing by will or on intestacy.

5.—(1.) Where, in the case of any person applying for probate or letters of administration granted in England or Ireland on or after the first day of June one thousand eight hundred and eighty-nine, or in the case of any person exhibiting an inventory in Scotland on or after that day, the value of the estate and effects in respect whereof duty is charged on the affidavit or inventory by section twenty-seven of the Cus-

toms and Inland Revenue Act, 1881, exceeds ten thousand pounds, he shall together with such affidavit or inventory deliver a statement of the value of such estate and effects. The statement shall be transmitted with the affidavit or inventory to the Commissioners of Inland Revenue by the proper officer of the High Court of Justice in England or Ireland, or of the proper court in Scotland, and the certificate required under section thirty of the said act shall extend to, and include the fact of the delivery of the statement. 52 Vict. c. 7.

(2.) Where the value of the personal or moveable property included in an account delivered according to section thirty-eight of the Customs and Inland Revenue Act, 1881, on or after the first day of June one thousand eight hundred and eighty-nine, exceeds ten thousand pounds, the person delivering the account shall also deliver together therewith a statement of the value of such property.

(3.) Where pursuant to the provisions of section thirty-two of the Customs and Inland Revenue Act, 1881, a further affidavit is required to be delivered by any person, and where any person intromitting with, or entering upon the possession or management of, any personal or moveable estate or effects in Scotland of any person dying, is required by law to exhibit an additional inventory, the following provisions shall apply:

(a) If the value of the estate and effects in respect whereof duty was charged on the former affidavit or inventory under section twenty-seven of the Customs and Inland Revenue Act, 1881, exceeded ten thousand pounds, the person delivering the further affidavit or exhibiting the additional inventory shall deliver together therewith a statement of the value of the estate and effects included therein or of the increase of value of the estate and effects included in the former affidavit or inventory, as the case may be:

(b) If the value of the estate and effects in respect whereof duty has been charged under the Customs and Inland Revenue Act, 1881, did not exceed ten thousand pounds, and such value together with the value of the estate and effects included in the further affidavit or additional inventory delivered or exhibited or the increased value, as the case may be, exceeds ten thousand pounds, such person delivering the further affidavit or exhibiting the additional inventory shall deliver together therewith a statement of the value of the estate and effects included therein, and in the former affidavit or inventory,

52 Vict. c. 7.

or of the value as increased of the estate and effects included in the former affidavit or inventory, as the case may be.

(4.) There shall be charged and paid on every statement to be delivered in conformity with this section a duty of one pound for every full sum of one hundred pounds, and for any fraction of one hundred pounds over any multiple of one hundred pounds of the value of the estate and effects or of the personal or moveable property, as the case may be.

(5.) The duties respectively imposed by this section are to be in addition to the stamp duties charged on the affidavit required from persons applying for probate or letters of administration in England or Ireland, and on the inventery exhibited and recorded in Scotland, and in addition to the stamp duties charged on such accounts of personal and moveable property as are specified in section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by this act, but are not to be deemed "probate duties" within the meaning assigned to that expression by section twenty-one of the Local Government Act, 1888, or by section five of the Probate Duties (Scotland and Ireland) Act, 1888.

44 & 45 Vict. c. 12.

51 & 52 Vict. c. 41.

51 & 52 Vict. c. 60.

(6.) The provisions contained in section thirty-one of the Customs and Inland Revenue Act, 1881, for the return of stamp duty overpaid, shall apply to the return of duty overpaid on any statement delivered under this section, and in Scotland a return of duty overpaid on any statement so delivered shall be made in like manner as a return is now made of stamp duty overpaid on an additional inventory.

(7.) Where a further affidavit or additional inventory is delivered or exhibited of any estate or effects of a deceased person after a former affidavit or inventory of the estate and effects of the same person has been delivered or exhibited and recorded prior to the first day of June one thousand eight hundred and eighty-nine, it shall not be necessary to deliver any statement of the value of the estate and effects of such person under this section.

Estate duty on successions.

16 & 17 Vict. c. 51.

6.—(1.) Where the value of any succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine chargeable with duty under the Succession Duty Act, 1853, and the Customs and Inland Revenue Act, 1888, exceeds ten thousand pounds, and where the value of any succession to real property under the will or intestacy of any person so dying chargeable with duty under the said act does not exceed ten thousand pounds, but such value together with the value of any other benefit taken by the successor under such will or intestacy exceeds ten thousand pounds, a separate statement of the value of the

succession shall be delivered to the Commissioners of Inland Revenue, together with the account to be delivered under section forty-five of the said act. 52 Vict. c. 7.

(2.) There shall be charged and paid on every statement to be delivered in conformity with this section, in respect of the value of the succession, a duty of one pound for every full sum of one hundred pounds, and for any fraction of one hundred pounds over any multiple of one hundred pounds of such value.

(3.) The duty imposed by this section shall not be payable upon the value of leaseholds passing by will or devolution by law or of property included in an account delivered according to section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by this act, in respect of which value duty has been paid under the last preceding section.

(4.) The duty imposed by this section is to be in addition to any duties chargeable under the Succession Duty Act, 1853, and section 21 of the Customs and Inland Revenue Act, 1888, and shall, subject to the provisions of this act, be assessed and paid in like manner as succession duty, and be subject to the enactments relating to that duty, so far as the same are applicable. 51 & 52 Vict. c. 8.

(5.) The value upon which the duty imposed by this section in respect of a succession to real property is to be charged and assessed shall be ascertained in accordance with the Succession Duty Act, 1853, subject to the following provisions:

(a) In the case of a successor who is entitled to the real property comprised in his succession for an estate in fee simple, or in fee according to the custom of any manor, or for lives renewable under any custom or under any lease for lives, or for any estate in tail, or under an entail under which he can acquire the property in fee simple without consent of any person, or is entitled to any such property for life, and competent to dispose as he shall think fit of a continuing interest therein, the value shall be the principal value of such property based upon the annual value estimated after making such allowances (if any) as ought to be made under the said act. The duty payable in respect of such principal value shall not in any case exceed the amount which would be chargeable upon an annuity equal to such annual value according to the highest value in Table III. in the schedule of the Succession Duty Act, 1853:

(b) In the case of an increase of benefit accruing to a successor, and chargeable to succession duty by reference to sections five, twenty or twenty-five of the Succession Duty Act, 1853, where the value of the

52 Vict. c. 7.

succession, apart from the increase of benefit, shall exceed ten thousand pounds, such increase of benefit shall be chargeable with duty under this section, whatever may be the value thereof; and where the value of the succession, apart from the increase of benefit, shall not exceed ten thousand pounds, the value of such increase of benefit, as well as of every preceding increase of benefit, shall be added to the value of the succession for the purpose of the said duty.

(6.) The duty imposed by this section shall in the case of real property be a first charge thereon, or on the interest of the successor therein, according as the duty is or is not chargeable on the principal value of such property, and shall be paid in like manner as if the duty were a part of the succession duty payable under section twenty-two of the Customs and Inland Revenue Act, 1888, and together with the payments in respect of that duty.

51 & 52 Vict. c. 8.

Duration of charge of estate duty.

7. The duties hereinbefore imposed by this part of this act shall not be payable in respect of the value of the estate and effects of any person dying on or after the first day of June one thousand eight hundred and ninety-six, or of the value of any personal or moveable property included in an account by relation to the death of any person so dying, or in respect of the value of any succession upon the death of any person so dying, and statements of such values shall not be required.

Double duty or interest payable in case of default.

8.—(1.) If any person who ought to deliver a statement as required by this part of this act shall neglect to do so, he shall be liable to pay to Her Majesty double the amount of duty chargeable, and the same shall be a debt due from him to the Crown, and be recoverable by any of the ways or means now in force for the recovery of probate, legacy, or succession duties.

(2.) In any case in which any duty hereinbefore imposed by this part of this act shall be in arrear, the person by whom the arrears of duty may be payable shall be liable to pay interest thereon at the rate of four pounds per centum per annum, and such interest shall be recoverable by the Commissioners of Inland Revenue in the same manner as the arrears of duty and as part thereof: Provided always, that the acceptance or recovery by the said commissioners of arrears of duty, with interest thereon as aforesaid, shall be an absolute waiver of the penalties (if any) which may have been incurred.

The duties to be stamp duties.

9.—(1.) The duties hereinbefore imposed by this part of this act shall be stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue, who by themselves and their officers shall have the same

powers and authorities for the collection, recovery, and management thereof as are vested in them for the collection, recovery, and management of any stamp duties, and shall have all other powers and authorities requisite for carrying this part of this act into execution. 52 Vict. c. 7.

(2.) The statements required to be delivered under this part of this act shall be in such form as may be prescribed by the Commissioners of Inland Revenue, who shall provide forms accordingly, and the duty on the statement shall be denoted in such manner as the commissioners may think proper.

Amendments of Law as to Succession Duties and Duties on Accounts.

Amendments of the law as to succession duty.

10.—(1.) The allowance under section thirty-eight of the Succession Duty Act, 1853, to a successor upon taking a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, shall only be made in respect of the value of property which the successor may have acquired by any title not conferring a succession on him, and which passes from the successor to some other person.

(2.) Subject to the relief given by section eighteen of the Succession Duty Act, 1853, in respect of property not amounting in money or principal value to the sum of one hundred pounds, the duties charged under the said act, and section twenty-one of the Customs and Inland Revenue Act, 1888, shall be payable upon a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, although the value thereof shall be less than twenty pounds.

(3.) The Commissioners of Inland Revenue, if dissatisfied with the account and estimate originally delivered in conformity with section forty-five of the Succession Duty Act, 1853, may, subject to appeal as therein provided, assess the duty on the footing of such account and upon such estimate as they may place thereon, or proceed according to the directions of that section.

Amendment of 44 & 45 Vict. c. 12, s. 38.

11.—(1.) Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended, as follows :—

> The description of property marked (a) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property bonâ fide possession

52 Vict. c. 7.

and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise:

The description of property marked (b) shall be construed as if the expression "to be transferred to or "vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person:

The description of property marked (c) shall be construed as if the expression "voluntary settlement" included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property," wherever the same occurs, included the proceeds of sale thereof:

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(2.) A return of stamp duty shall not be made under subsection three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June one thousand eight hundred and eighty-nine.

Limitation of Claims to Succession Duty or Legacy Duty in certain Cases.

Purchasers and mortgagees exempted from liability to succession duty after a specified period.

12.—(1.) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for succession duty or duty hereinbefore imposed by this part of this act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the

fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this act, then after the expiration of six years from the last-mentioned date. 52 Vict. c. 7.

(2.) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said act, other than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption.

(3.) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

Power to deposit copies of documents and liability to duty to cease after specified period.

13.—(1.) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any succession duty, or duty hereinbefore imposed by this part of this act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

(2.) The officer of the commissioners receiving the copy shall, on request of the person making the deposit, and either by indorsement on the original document or otherwise, give a receipt in writing under his hand for the copy.

(3.) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for

52 Vict. c. 7.

payment of any duty under such document after the expiration of six years from the date of notice to the commissioners of the fact which gives rise to an immediate claim to such duty.

(4.) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

Liability to duty under documents admitted to probate to cease after a specified period.

14. No person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy duty or succession duty, or duty hereinbefore imposed by this part of this act, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the commissioners that the account rendered was correct to the best of his knowledge, information, and belief.

As to notices under this part of this act.

15. Every notice referred to in this part of this act shall be in writing and in such form as the Commissioners of Inland Revenue shall prescribe, and shall be delivered or sent in duplicate, and an acknowledgment of the receipt thereof, by or on behalf of the commissioners, upon the duplicate shall be forthwith returned to the person by whom the notice was delivered or sent.

Miscellaneous.

Construction of section 11 of 51 & 52 Vict. c. 8.

16. Whereas doubts have arisen as to the construction of the expression "amount of nominal capital to be raised by "shares of any company to be registered with limited liability" in section eleven of the Customs and Inland Revenue Act, 1888, be it enacted that such expression shall be construed as meaning and including the entire amount which is to form the nominal share capital of the company.

Charge of duty on capital of companies with limited liability otherwise than under the Companies Acts.

17.—(1.) Where by virtue of any letters patent to be hereafter granted by Her Majesty, her heirs or successors, or any act of parliament to be hereafter passed, the liability of the holders of shares in the capital of any corporation or company is limited otherwise than by registration with limited liability under the law in that behalf, a statement of the amount of nominal share capital of the corporation or company shall be delivered by the corporation or company to the Commissioners of Inland Revenue within one calendar month after the date

of the letters patent or the passing of the act, and in case of any increase of the amount of nominal share capital of any corporation or company, whether now existing or to be hereafter formed, being authorised by any letters patent or act of parliament to be hereafter granted or passed, a statement of the amount of such increase shall be delivered by the corporation or company to the said commissioners within the like period. 52 Vict. c. 7.

(2.) The statement shall be charged with an ad valorem stamp duty of two shillings for every one hundred pounds and any fraction of one hundred pounds over any multiple of one hundred pounds of the amount of such capital or increase of capital as the case may be, and shall be duly stamped accordingly when the same is delivered to the said commissioners.

(3.) In the case of neglect to deliver such a statement as is hereby required to be delivered, the corporation or company shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable, and a like penalty for every month after the first month during which such neglect shall continue.

Certain contracts to be chargeable as conveyances on sale.

18.—(1.) Every instrument containing a contract, whether executed or executory, for the sale or purchase of any property, save such as passes by delivery, or must be conveyed by deed, shall, so far as relates to stamp duty thereon, be deemed to be a conveyance on sale of such property; provided that the ad valorem duty paid upon any instrument in respect of any executory contract shall be returned by the Commissioners of Inland Revenue, if, within twelve months from the date of the first execution of the instrument, the executory contract shall have been rescinded, or shall have become null and void by reason of any notice given according to the terms of the instrument, or the default of any party thereto to perform any condition precedent specified in the instrument, and declared to be essential to the completion of the contract.

(2.) Any instrument made subsequently to the instrument containing the contract for the purpose of vesting in the purchaser the property contracted to be sold shall not be charged with any higher duty than ten shillings.

57 & 58 Vict. c. 30.

57 & 58 Vict. c. 30.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year.

[31st July, 1894.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Estate Duty.

Grant of Estate Duty.

Grant of estate duty.

1. In the case of every person dying after the commencement of this part of this act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this act shall not be levied in respect of property chargeable with such Estate duty.

What property is deemed to pass.

2.—(1.) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

(a) Property of which the deceased was at the time of his death competent to dispose;

(b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property

the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole ; 57 & 58 Vict. c. 30.

(c) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom ; and 44 & 45 Vict. c. 12. 52 & 53 Vict. c. 7.

(d) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2.) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

(3.) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was bonâ fide assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

Exception for transactions for money consideration.

3.—(1.) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bonâ fide purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2.) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit,

57 & 58 Vict. c. 30.

or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

Aggregation of property to form one estate for purpose of duty.

4. For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or lineal descendant of the deceased, shall not be aggregated with any other property but shall be an estate by itself, and the estate duty shall be levied at the proper graduated rate on the principal value thereof; but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of estate duty.

Settled property.

5.—(1.) Where property in respect of which estate duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property,—

(a) a further estate duty (called settlement estate duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but

(b) during the continuance of the settlement the settlement estate duty shall not be payable more than once.

(2.) If estate duty has already been paid in respect of any settled property since the date of the settlement, the estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

(3.) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and

subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death. 57 & 58 Vict. c. 30.

(4.) Any person paying the settlement estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the ad valorem stamp duty (if any) charged on the settlement in respect of that property.

(5.) Where any lands or chattels are so settled, whether by act of parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of estate duty, in like manner as for the purpose of succession duty.

Collection and Recovery of Duty and Value of Property.

Collection and recovery of estate duty.

6.—(1.) Estate duty shall be a stamp duty, collected and recovered as hereinafter mentioned.

(2.) The executor of the deceased shall pay the estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

(3.) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4.) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the commissioners within six months after the death by the person accountable for the duty, or within such further time as the commissioners may allow.

(5.) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

57 & 58 Vict. c. 30.

(6.) Interest at the rate of three per cent. per annum on the estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, and shall form part of the estate duty.

(7.) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8.) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, less income tax, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

Value of property.

7.—(1.) In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created bonâ fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(c) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

(2.) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which estate duty is paid; and there shall be no repayment

of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the commissioners, that the personal property of the deceaseds ituate in the foreign country or British possession in which the person to whom such debts are due resides, is insufficient for their payment. 57 & 58 Vict. c. 30.

(3.) Where the commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4.) Where any property passing on the death of the deceased is situate in a foreign country, and the commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5.) The principal value of any property shall be estimated to be the price which, in the opinion of the commissioners, such property would fetch if sold in the open market at the time of the death of the deceased;

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed. 16 & 17 Vict. c. 51.

(6.) Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

(a) for the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(b) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

57 & 58 Vict. c. 30.

(7.) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8.) Subject to the provisions of this act, the value of any property for the purpose of estate duty shall be ascertained by the commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the commissioners consider necessary.

(9.) Where the commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the commissioners.

(10.) Property passing on any death shall not be aggregated more than once, nor shall estate duty in respect thereof be more than once levied on the same death.

Supplemental provisions as to collection, recovery, and repayment of and exemption from estate duty.

8.—(1.) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of estate duty, and for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this part of this act.

52 & 53 Vict. c. 7.
54 & 55 Vict. c. 66.

(2.) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if estate duty were therein mentioned as well as succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3.) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which estate duty is payable upon the death of

the deceased, and shall be accountable for the estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received. 57 & 58 Vict. c. 30.

(4.) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property, and shall, within the time required by this act or such later time as the commissioners allow, deliver to the commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(5.) Every person accountable for estate duty, and every person whom the commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

(6.) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the estate duty, if any, remaining unpaid for which he is accountable, according as the commissioners elect: Provided that the commissioners, or in any proceeding for the recovery of such penalty the court, shall have power to reduce any such penalty.

(7.) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of dis-

57 & 58 Vict. c. 30.

charge has been delivered under this act, be payable, and be treated as duty in arrear.

(8.) The commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9.) Where the commissioners are satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the commissioners think fit.

(10.) Interest on arrears of estate duty shall be paid as if they were arrears of legacy duty.

(11.) If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

(12.) Where it is proved to the satisfaction of the commissioners that too much estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over valuation by the commissioners, with interest at three per cent. per annum.

(13.) Where any proceeding for the recovery of estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14.) All affidavits, accounts, certificates, statements, and forms used for the purpose of this part of this act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15.) No charge shall be made for any certificate given by the commissioners under this act.

(16.) The estate duty may be collected by means of stamps or such other means as the commissioners prescribe.

(17.) The form of certificate required to be given by the proper officer of the court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of

44 & 45 Vict. c. 12.

court in such manner as may appear necessary for carrying into effect this act. 57 & 58 Vict. c. 30.

(18.) Nothing in this section shall render liable to or accountable for duty a bonâ fide purchaser for valuable consideration without notice.

Charge of estate duty on property, and facilities for raising it.

9.—(1.) A rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a bonâ fide purchaser thereof for valuable consideration without notice.

(2.) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the commissioners in assessing the value of the property for the purposes of estate duty, the commissioners shall grant a certificate of the estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

(3.) Subject to any repayment of estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this act an allowance ought to have been but has not been made, or from any other cause, the certificate of the commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the commissioners shall be made to the person producing to them the said certificate.

(4.) If the rateable part of the estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this act mentioned.

(5.) A person authorised or required to pay the estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6.) A person having a limited interest in any property, who pays the estate duty in respect of that property, shall be

57 & 58 Vict. c. 30.

entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(7.) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

45 & 46 Vict. c. 38.

Appeal from commissioners.

10.—(1.) Any person aggrieved by the decision of the commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the commissioners the excess shall be repaid.

(2.) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

(3.) The costs of the appeal shall be in the discretion of the court, and the court, where it appears to the court just, may order the commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the court just.

(4.) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the court.

(5.) Where the value as alleged by the commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court.

(6.) The county council of every county or county borough in Great Britain, shall within twelve months after the commencement of this act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal. 57 & 58 Vict. c. 30.

Discharge from and Apportionment of Duty.

11.—(1.) The commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof as the case may be. Release of persons paying estate duty.

(2.) Where a person accountable for the estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the commissioners may determine the rate of the estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for estate duty, and the commissioners shall give a certificate of such discharge.

(3.) A certificate of the commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for;

(4.) Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a bonâ fide purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

57 & 58 Vict. c. 30.
Commutation of duty on interest in expectancy.

12. The commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

Powers to accept composition for death duties.

13.—(1.) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appear proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly;

(2.) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3.) In this section the expression "death duties" means the estate duty under this act, the duties mentioned in the First Schedule to this act and the legacy and succession duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

44 & 45 Vict. c. 12.

Apportionment of duty.

14.—(1.) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property, (whether as capital or as an annuity or otherwise,) under a disposition not containing any express provision to the contrary.

(2.) Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined upon

application by any person interested in manner directed by rules of court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate. 57 & 58 Vict. c. 30.

(3.) Any person from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the commissioners.

Exemptions from estate duty.

15.—(1.) Estate duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.

(2.) It shall be lawful for the Treasury to remit the estate duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of estate duty.

(3.) Estate duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4.) Estate duty shall not be payable in respect of any advowson or church patronage which would have been free from succession duty under section twenty-four of the Succession Duty Act, 1853. 16 & 17 Vict. c. 51.

Small Estates.

Provision for estates not exceeding 1,000*l.* 44 & 45 Vict. c. 12.

16.—(1.) The provisions of sections thirty-three, thirty-five, and thirty-six of the Customs and Inland Revenue Act, 1881, (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds,) shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed

57 & 58 Vict. c. 30.

five hundred pounds, and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings.

(2.) All such property may be comprised in the notice under the said section thirty-three.

(3.) Where the net value of the property, real and personal, in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of estate duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or estate duty has been paid upon the principal value of that estate, the settlement estate duty and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

(4.) Where representation granted under this section if granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the Probate Division of the High Court in England or Ireland, as the case may be, shall affix the seal of the court thereto on the same being sent to him for that purpose, with the fee of two shillings and sixpence.

(5.) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

Rates of Estate Duty.

Scale of rates of estate duty.

17. The rates of estate duty shall be according to the following scale:—

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	100	and does not exceed		500	One pound.
,,	500	,,	,,	1,000	Two pounds.
,,	1,000	,,	,,	10,000	Three pounds.
,,	10,000	,,	,,	25,000	Four pounds.
,,	25,000	,,	,,	50,000	Four pounds ten shillings.
,,	50,000	,,	,,	75,000	Five pounds.
,,	75,000	,,	,,	100,000	Five pounds ten shillings.
,,	100,000	,,	,,	150,000	Six pounds.
,,	150,000	,,	,,	250,000	Six pounds ten shillings.
,,	250,000	,,	,,	500,000	Seven pounds.
,,	500,000	,,	,,	1,000,000	Seven pounds ten shillings.
,,	1,000,000	.....			Eight pounds.

The rate of the settlement estate duty where the property is settled shall be one per cent. 57 & 58 Vict. c. 30.

Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the estate duty and the settlement estate duty shall be payable at the rate per cent. for the full sum of ten pounds.

Succession Duty.

18.—(1.) The value for the purpose of succession duty of a succession to real property arising on the death of a deceased person shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the estate duty payable in respect thereof on the said death and the expenses if any properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorised by this act for estate duty on real property, with interest at the rate of three per cent. per annum; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof; and after the expiration of the said twelve months the provisions with respect to discount shall not apply. Value of real successions for succession duty.

(2.) The principal value of real property for the purpose of succession duty shall be ascertained in the same manner as it would be ascertained under the provisions of this act for the purpose of estate duty; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of succession duty shall be arrived at in the same manner as under the provisions of this part of this act for the purpose of estate duty.

Local Taxation Grant.

19. In substitution for the grant out of the probate duties under the Local Government Act, 1888, the Probate Duty (Scotland and Ireland) Act, 1888, and the Local Government (Scotland) Act, 1889, there shall be paid, out of the proceeds of the estate duty derived from personal property, such sum as the commissioners, in accordance with regulations made by the Treasury under those acts, may determine to be an amount equal to one and a half per cent. on the net value of such of the property in respect of which estate duty is leviable as would, if this act had not been passed, have been Adaptation of law as to probate duty grant. 51 & 52 Vict. cc. 41 and 60. 52 & 53 Vict. c. 50.

57 & 58 Vict. c. 30. 44 & 45 Vict. c. 12.

chargeable with the duty imposed by section twenty-seven of the Customs and Inland Revenue Act, 1881, on inland revenue affidavits, and the first-mentioned acts shall apply, as if the sum so determined were the probate duty grant or one half of the proceeds of the sums collected in respect of the probate duties (as the case requires) within the meaning of those acts.

British Possessions.

Exception as to property in British possessions.

20.—(1.) Where the commissioners are satisfied, that in a British possession to which this section applies, duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the estate duty payable in respect of that property on the same death.

(2.) Nothing in this act shall be held to create a charge for estate duty on any property situate in a British possession, while so situate, or to authorise the commissioners to take any proceedings in a British possession for the recovery of any estate duty.

(3.) Her Majesty the Queen may, by order in council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4.) Her Majesty in council may revoke any such order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an order under this section.

Savings and Definitions.

Savings.

21.—(1.) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this part of this act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this act, or the duty payable on any representation or inventory under any act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

44 & 45 Vict. c. 12.

(2.) Where a person died before the commencement of this part of this act, the duties mentioned in the First Schedule to this act shall continue to be payable in like manner in all respects as if this act had not passed. 57 & 58 Vict. c. 30.

(3.) Where an interest in expectancy in any property has, before the commencement of this part of this act, been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4.) The settlement estate duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this part of this act.

(5.) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty shall not be payable in respect of that property until the death of the survivor.

22.—(1.) In this part of this act, unless the context otherwise requires:— Definitions.

(a) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this part of this act:

(b) The expression "will" includes any testamentary instrument:

(c) The expression "representation" means probate of a will or letters of administration:

(d) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this part of this act, any person who takes possession of or intermeddles with the personal property of a deceased person:

(e) The expression "estate duty" means estate duty under this act:

(f) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale:

(g) The expression "agricultural property" means agricultural land pasture and woodland, and also includes such cottages, farm buildings, farm houses, and

57 & 58 Vict. c. 30.

mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property:

(h) The expression "settled property" means property comprised in a settlement:

(i) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust:

45 & 46 Vict. c. 38.

(j) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases:

(k) The expression "incumbrances" includes mortgages and terminable charges:

(l) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the "death" includes "at a period ascertainable only by "reference to the death":

(m) The expression "the commissioners" means the Commissioners of Inland Revenue:

(n) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this act with the account and Schedule annexed thereto:

(o) The expression "prescribed" means prescribed by the commissioners.

(2.) For the purposes of this part of this act—

(a) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general "power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument inter vivos or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life

under the Settled Land Act, 1882, or as mortgagee : 57 & 58 Vict. c. 30.

(b) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required : 45 & 46 Vict. c. 38.

(c) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3.) This part of this act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Application to Scotland.

23. In the application of this part of this act to Scotland unless the context otherwise requires :— Application of part of act to Scotland.

(1.) The Court of Session shall be substituted for the High Court :

(2.) "Sheriff court" shall be substituted for "county "court" :

(3.) "Confirmation" shall be substituted for "represen- "tation" :

(4.) The expression "receiver of the property and of the "rents and profits thereof," means a judicial factor upon the property :

(5.) The expression "Inland Revenue affidavit," means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory :

(6.) The expression "on delivering the Inland Revenue "affidavit" means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight of the act of the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine :

(7.) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that act, and the acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the court to any representation granted in England or Ireland upon the same 44 & 45 Vict. c. 12.

57 & 58 Vict. c. 30.

being sent to him for that purpose, enclosing a fee of two shillings and sixpence :

(8.) The expression "personal property" means moveable property :

(9.) The expression "real property" includes heritable property :

(10.) The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage :

(11.) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person :

(12.) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this act :

(13.) The expression "trustee" includes a tutor, curator, and judicial factor :

(14.) The expression "settled property" shall not include property held under entail :

(15.) An institute or heir of entail in possession of an entailed estate shall whether sui juris or not be deemed for the purposes of this act to be a person competent to dispose of such estate :

(16.) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, settlement estate duty as well as estate duty shall be paid in respect of such estate, but neither estate duty nor settlement estate duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies :

(17.) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid estate duty in

respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the estate duty paid by him as aforesaid:

(18.) Where any person who pays estate duty on any property, and in whom the property is not vested, is by this act authorised to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the court of session—

(a) for an order of sale of the property or part of it, and in the event of the court granting such order, it shall provide for the payment out of the price of the amount of the estate duty which has been paid by such person, and the court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the court shall seem proper; the court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the court shall grant authority to the clerk of court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested; or

(b) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the estate duty, for the amount of the said duty, and if the person in whom the property is vested refuses, or fails to do so, the court shall grant authority to the clerk of court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this act in determining the value of the property for the purpose of estate duty;

57 & 58 Vict. c. 30.

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (a) and (b) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty:

(19.) This part of this act shall apply to property in which the wife or husband of the deceased takes an estate of terce or courtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

Commencement.

Commencement of part of act.

24. This part of this act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this part of this act referred to as the commencement of this part of this act.

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60 Vict. c. 15.

60 Vict. c. 15. *An Act to amend the Navy and Marines (Wills) Act, 1865.* [3rd June, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of 28 & 29 Vict. c. 72, as to wills of seamen, &c.

1. Section five of the Navy and Marines (Wills) Act, 1865, (which contains regulations as to the wills of persons being or having been seamen or marines with respect to wages, allowances, and other like payments) shall, in its application to the will of any person who dies after the passing of this act, be amended as follows:—

(1.) The words "or when he has ceased so to serve" shall be repealed:

(2.) After the words "or a notary public" shall be inserted the words "or a solicitor, or in Scotland a law agent."

Short title.

2. This act may be cited as the Navy and Marines (Wills) Act, 1897, and the Navy and Marines (Wills) Act, 1865, and this act may be cited together as the Navy and Marines (Wills) Acts, 1865 and 1897.

60 & 61 Vict. c. 65.

60 & 61 Vict. c. 65.

An Act to establish a Real Representative, and to amend the Land Transfer Act, 1875. [6th August, 1897.]

Whereas it is expedient to establish a real representative, and to amend the Land Transfer Act, 1875, in this act referred to as "the principal act": 38 & 39 Vict. c. 87.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

Establishment of a Real Representative.

Devolution of legal interest in real estate on death.

1.—(1.) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

(2.) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3.) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4.) The expression "real estate," in this part of this act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5.) This section applies only in cases of death after the commencement of this act.

Provisions as to administration.

2.—(1.) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2.) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate

60 & 61 Vict. c. 65.

or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the court, to sell or transfer real estate.

(3.) In the administration of the assets of a person dying after the commencement of this act, his real estate shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

(4.) Where a person dies possessed of real estate, the court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by rules of court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

Provision for transfer to heir or devisee.

3.—(1.) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.

(2.) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

(3.) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration. 60 & 61 Vict. c. 65.

(4.) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the registrar to register the person named in the assent as proprietor of the land.

Appropriation of land in satisfaction of legacy or share in estate.

4.—(1.) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the court, and such valuation and appropriation shall be conclusive save as otherwise directed by the court.

(2.) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

(3.) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorise the registrar to register the person to whom the property is appropriated as proprietor of the land.

Liability for duty.

5. Nothing in this part of this act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

Commencement of act.

25. This act shall come into operation on the first day of January one thousand eight hundred and ninety-eight.

Short title and construction.

26. This act may be cited as the Land Transfer Act, 1897, and shall be construed as one with the principal act, and that act and this act may be cited together as the Land Transfer Acts, 1875 and 1897.

RULES, ORDERS, AND INSTRUCTIONS

FOR THE REGISTRARS OF THE PRINCIPAL REGISTRY OF HER MAJESTY'S COURT OF PROBATE,

Made under the provisions of the Statutes 20 & 21 *Vict. c.* 77, *and* 21 & 22 *Vict. c.* 95,

IN RESPECT OF

NON-CONTENTIOUS BUSINESS.

Non-Contentious Business.

All rules, orders, and instructions heretofore made and issued for the Registrars of the Principal Registry of her Majesty's Court of Probate in respect of non-contentious business shall be repealed, on and after the first day of September, 1862, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following rules, orders, and instructions in respect of non-contentious business shall take effect on and after the first day of September, 1862.

NON-CONTENTIOUS BUSINESS shall include all common form business as defined by the "Court of Probate Act, 1857," and the warning of caveats.

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1. APPLICATION FOR PROBATE OR LETTERS OF ADMINISTRATION may be made at the Principal Registry in all cases.

2. Such applications may be made through a proctor, solicitor, or attorney, or in person by executors and parties entitled to grants of administration; but these latter applications will not be received by letter, nor through the medium of any agent.

3. The Registrars are not to allow probate or letters of administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The Registrars are notwithstanding to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

Non-Contentious Business.

AS TO PROBATE OF WILLS AND CODICILS AND LETTERS OF ADMINISTRATION WITH THE WILL [OR WILL AND CODICILS] ANNEXED, WHERE THE WILLS AND CODICILS ARE DATED AFTER 31ST DECEMBER, 1837.

Execution of a Will.

4. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the Registrars must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution were in fact complied with; and such affidavit must be engrossed and form part of the probate.

See Amended Rules, Nos. 4 and 4*a*, p. 723.

5. If on perusing the affidavits of both the subscribing witnesses it appear that the requirements of the statute were not complied with, the Registrars must refuse probate.

6. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will or codicil has been duly executed, the Registrars may require the parties to bring the matter before the Judge on motion.

7. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will or codicil; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

Interlineations and Alterations.

8. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto.

9. When interlineations or alterations appear in the will (unless duly executed, or recited in, or otherwise identified by, the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution, must be filed, except when the alterations are merely verbal, or when they are of but small importance and are evidenced by the initials of the attesting witnesses.

Non-Contentious Business.

Erasures and Obliterations.

10. Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the probate.

11. In every case of words having been erased or obliterated which might have been of importance, an affidavit must be required.

Deeds, &c. referred to in a Will or Codicil.

12. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of such deed, paper, memorandum, or other document must be required, with a view to ascertain whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

13. No deed, paper, memorandum, or other document can form part of a will unless it was in existence at the time when the will was executed.

Appearance of the Paper.

14. If there are any vestiges of sealing wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and, if not produced, its non-production must be accounted for.

Married Woman's Will.

This Rule repealed. For new Rule, see p. 780.

15. In granting probate of a married woman's will made by virtue of a power or administration with such will annexed, the power under which the will purports to have been made must be specified in the grant.

Codicils.

16. The above rules and orders respecting wills apply equally to codicils.

Non-Contentious Business.

AS TO PROBATE OF WILLS, CODICILS, AND TESTAMENTARY PAPERS RELATING TO PERSONALTY, AND DATED BEFORE THE 1ST JANUARY, 1838.

Execution of a Will.

17. It is not necessary that a will, codicil, or testamentary paper dated before 1st January, 1838, should be signed by the testator or attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition must be clearly proved by circumstances.

18. A will, codicil, or testamentary paper, signed at the end of it by the testator and attested by two disinterested witnesses (although there be no clause of attestation) is primâ facie entitled to probate.

19. In cases where a will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to the paper in the presence of one attesting witness, or produced it with his name already subscribed, or his mark already made, to one attesting witness, and afterwards produced it to the other attesting witness, provided that on each occasion he declared it to be his will, codicil, or testamentary disposition, or otherwise notified his intention that it should operate as such.

20. If the will, codicil, or testamentary paper is signed at the end of it by the testator but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

21. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstance of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him or her incompetent to become an attesting witness to it, so that if the name of a person so

Non-Contentious Business.

interested appears as that of a subscribing witness to the will, codicil, or testamentary paper, the same, so far as regards his or her attestation, must be considered as unattested, and his or her evidence in support thereof will be inadmissible, unless he or she shall first release his or her interest thereunder.

23. If an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must primâ facie be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

Appearance of Paper.

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration, or otherwise, and every circumstance leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

Alterations and Interlineations.

25. Alterations and interlineations made by the testator, if unattested, are to be proved by the affidavits of two persons as to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that such alterations and interlineations were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 26.

Deeds, &c. referred to in a Will or annexed to a Will.

26. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders, and instructions as to wills bearing date since the 31st December, 1837, will apply.

Republication by Codicil.

27. A will made before the 1st of January, 1838, is republished by a subsequent codicil thereto duly executed.

Non-Contentious Business.

AS TO LETTERS OF ADMINISTRATION.

Notice to other Next of Kin.

28. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the Registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

Limited Administrations.

29. LIMITED ADMINISTRATIONS are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the Judge.

30. No person entitled to a general grant of administration of the personal estate and effects of the deceased, will be permitted to take a limited grant, except under the direction of the Judge.

Administrations under Section 73.

31. Whenever the court under sect. 73 appoints an administrator other than the person who, prior to the "Court of Probate Act, 1857," would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

Grants to an Attorney.

32. In the case of a person residing out of England, administration, or administration with the will annexed, may be granted to his attorney, acting under a power of attorney.

Grants of Administration to Guardians.

33. Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next of kin or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

34. In cases of infants (*i.e.*, under the age of seven years) not having a testamentary guardian, or a guardian appointed by the High Court of Chancery, a guardian must be assigned by order of the Judge or of one of the Registrars; the Registrar's order is to be founded on an affidavit showing that the proposed guardian is either de facto next of kin of the infants, or that their next of kin de facto has renounced his or her right to the guardianship, and is

Non-Contentious Business.

consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship.

35. Where there are both minors and infants, the guardian elected by the minors may act for the infants without being specially assigned to them by order of the Judge or a Registrar, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the Judge or of a Registrar.

36. In all cases where grants of administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent court, or are the testamentary guardians of the minors or infants.

Administrator's Oath.

37. The oath of administrators, and of administrators with the will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and the oath is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

Administration Bonds.

38. Administration bonds are to be attested by an officer of the Principal Registry, by a District Registrar, or by a Commissioner or other person now or hereafter to be authorized to administer oaths under 20 & 21 Vict. c. 77, and 21 and 22 Vict. c. 95, but in no case are they to be attested by the proctor, solicitor, attorney, or agent of the party who executes them. The signature of the administrator or administratrix to such bonds, if not taken in the Principal Registry, must be attested by the same person who administers the oath to such administrator or administratrix.

39. In all cases of limited or special administration two sureties are to be required to the administration bond (unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of or dealt with by the administrator by means of the

grant. The alleged value of such property is to be verified by affidavit if required.

40. The administration bond is in all cases of limited or special administrations, to be prepared in the Registry.

41. The Registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

Justification of Sureties.

42. When any person takes letters of administration in default of the appearance of persons cited, but not personally served, with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the Registry, and the sureties to the administration bond must justify.

General Rules and Orders for the Registrars of the Principal Registry.

Time of Issuing Grant.

43. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased unless under the direction of the Judge, or by order of two of the Registrars.

44. No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the Judge, or by order of two of the Registrars.

45. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the Registrars. Should the certificate be unsatisfactory the Registrars are to require such proof of the alleged cause of delay as they may see fit.

Filling up Grants.

46. All probates or letters of administration issued from the Principal Registry are to be filled up there.

Oath of Executors and Administrators.

47. The usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the Registry.

Non-Contentious Business.

Identity of Parties.

48. The Registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

Testamentary Papers to be Marked.

49. Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such executor or administrator and by the person before whom he is sworn.

Renunciations.

50. No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character.

Affidavits.

51. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.

For amended Rules 52 and 53, see p. 779.

52. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

53. No affidavit will be admitted in any matter in the Court of Probate of which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure.

54. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, Commissioner, or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature, in the presence of the Registrar, Commissioner, or other authority before whom the affidavit was made.

55. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a partner or clerk of his proctor, solicitor, or attorney.

56. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

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57. In every case where an affidavit is made by a subscribing witness to a will or codicil, such subscribing witness shall depose as to the mode in which the said will or codicil was executed and attested.

58. The Registrars are not to allow any affidavit to be filed (unless by leave of the Judge), which is not fairly and legibly written, or in which there is any interlineation, the extent of which at the time when the affidavit was sworn is not clearly shown by the initials of the Commissioner, or other person before whom it was sworn.

Caveats.

59. Any person intending to oppose the issuing of a grant of probate or letters of administration must, either personally or by his proctor, solicitor, or attorney, enter a caveat in the Principal Registry, or in a District Registry; if in the Principal Registry, the person entering the caveat must also insert the name of the deceased in the index to the caveat book.

60. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time.

61. The Registrars shall, immediately upon a caveat being entered, send notice thereof to the District Registrar of any district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

62. No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in a District Registry.

63. All caveats shall be warned from the Principal Registry. The warning is to be left at the place mentioned in the caveat as the address of the person who entered it.

64. It shall be sufficient for the warning of a caveat that a Registrar send by the public post a warning signed by himself, and directed to the person who entered the caveat, at the address mentioned in it.

65. The warning to a caveat is to state the name and interest of the party on whose behalf the same is issued, and if such person claims under a will or codicil, is also to state the date of such will or codicil, and is to contain an address within three miles of the General Post Office, at which any notice requiring service may be left. The form of warning will be supplied in the Registry.

66. Before any citation is signed by a Registrar, a caveat shall be entered against any grant being made in respect of the state and effects of the deceased to which such citation relates, and

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notice thereof shall be sent to the District Registrar of any district in which the deceased appears to have resided at the time of his death.

67. In order to clear off a caveat when no appearance has been entered to a warning duly served, an affidavit of the service of the warning, stating the manner of service and an affidavit of search for appearance and of non-appearance, must be filed.

Citations.

68. No citation is to issue under seal of the court until an affidavit, in verification of the averments it contains, has been filed in the Registry.

69. Citations are to be served personally when that can be done. Personal service shall be effected by leaving a true copy of the citation with the party cited, and showing him the original, if required by him so to do.

70. Citations and other instruments which cannot be personally served, are to be served by the insertion of the same, or of an abstract thereof, settled and signed by one of the Registrars, as an advertisement in such morning and evening London newspapers, and such local newspapers, and at such intervals as the Judge or one of the Registrars may direct.

Blind and Illiterate Testators.

71. The Registrars are not to allow probate of the will, or administration with the will annexed, of any blind or obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the testator before its execution, or that the testator had at such time knowledge of its contents.

Alterations in Grants, &c.

This rule altered. See p. 779.

72. Whenever the value of the personal estate and effects of a deceased person is re-sworn under a different amount, or any alteration is made in a grant, or a grant is revoked, and the volume of the printed calendar containing the entry of such grant has been forwarded to the District Registrars, notice of such re-swearing, alteration, or revocation is without delay to be forwarded by the Registrars of the Principal Registry to all the District Registrars.

Irish Grants.

See also additional Rule 107, p. 788.

73. The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England,

unless it appear from a certificate of the Commissioners of Inland Revenue, or their proper officer, that such probate or letters of administration is duly stamped in respect of the personal estate and effects of which the deceased died possessed in England. In respect to letters of administration, the provisions of statute 21 & 22 Vict. c. 95, s. 29, must also be complied with.

Grants for Property in the United Kingdom.

74. Whenever a grant of probate or of letters of administration is made under statute 21 & 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office, that the testator or intestate died domiciled in England, and that he was possessed of personal estate in Scotland, other than that excluded by 22 & 23 Vict. c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, a separate affidavit and schedule must also be filed. Upon all such grants a note or memorandum must also be written and signed by one of the Registrars to the effect that the testator or intestate died domiciled in England.

Notices to Queen's Proctor.

75. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's Procurator General (or in case the deceased died domiciled within the Duchy of Lancaster, to the Solicitor for the Duchy in London), in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take.

76. In the case of persons dying intestate without any known relation, a citation must be issued against the next of kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased, and the service thereof upon them shall be effected as required by Rule 70. Such citation must also be served upon the Queen's Proctor, or upon the Solicitor for the Duchy of Lancaster, as the case may require.

Transmission of Papers.

77. After motions have been made before the Judge in Court, the Registrars are, on the application of the parties (unless the

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Judge shall otherwise direct), to transmit to a District Registrar the original papers and documents, in order that the grant of probate or administration may be completed in a District Registry.

78. Papers and other documents may be transmitted by the Registrars of the Principal Registry to the District Registrars through the Post Office. Such letters or packets are to be superscribed with the words, "On Her Majesty's Service," and may be registered, if thought necessary.

Probate Copies of Wills.

See amended Rule, p. 723.

79. The Registrars are to take care that the copies of wills and affidavits to be annexed to the probate or letters of administration are fairly and properly written in the engrossing hand heretofore in use in the Prerogative Court, and are to reject those which are otherwise.

Office Copies.

80. Office copies of wills, and other documents furnished in the Principal Registry, will not be collated with the original will or other document, unless specially required. Every copy so required to be examined, shall be certified under the hand of one of the Registrars of the Principal Registry, to be an examined copy.

81. The seal of the Court is not to be affixed to any office copy of a will, or other document, unless the same has been certified to be an examined copy.

Attendances with Documents.

82. If a will or other document filed in the Registry is required to be produced at any place within three miles of the Principal Registry, application must be made for that purpose not later than the day previously to that named for its production.

83. If a will or other document filed in the Registry is required to be produced at any place beyond the above distance, application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place, and in every case such notice must be given (except by special leave of the Judge or Registrars) at least twenty-four hours before the clerk in whose charge the will or other document is to be placed will be required to set off.

Subpœnas to bring in Testamentary Papers.

84. Any person bringing in a will or testamentary paper, in obedience to a subpœna, is to take it in the first instance to the clerk of the papers, who will prepare a minute to be signed by the

Registrar to whom the will or paper brought in is to be delivered, and the Registrar will sign the minute recording the delivery thereof.

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85. The minute is to be entered in the book of Registrar's minutes in the usual manner; and the fees for the entry, and a further fee for filing each testamentary paper, will then be payable. If these fees should not be paid by the person bringing in the will or paper, the same are to be charged to the person who may first apply to the clerk of the papers to make use of the will or paper so brought in. In case the person bringing in a will or testamentary paper may desire to have a voucher for its delivery into the Registry, he may take an office copy of the minute on paying the usual fee for the same.

86. Any person served with a subpœna to bring in a testamentary paper is at liberty to enter an appearance on payment of the usual fees, if he thinks fit to do so.

Time allowed for appearing to a Warning, Citation, or Subpœna.

87. The time fixed by a warning or citation for entering an appearance, or by a subpœna, to bring in a testamentary paper, shall, in all cases, be exclusive of Sundays, Christmas Day, and Good Friday.

Taxing Bills of Costs.

88. Any bill of costs may be referred to the Registrars of the Principal Registry for taxation, and no special order shall hereafter be required for the purpose.

89. The bill of costs of any proctor, solicitor, or attorney will be taxed on his application, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner, and the Registrar shall decide in each case what may be a sufficient notice.

90. When an appointment has been made by a Registrar to tax a bill, the Registrar may proceed to tax the same after the expiration of a quarter of an hour, notwithstanding the absence of either party, or his agent, provided he be satisfied that the absent party has had due notice of the appointment for taxation.

91. If more than one-sixth is deducted from any bill of costs taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill.

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RULES, ORDERS, AND INSTRUCTIONS

As to Personal Applications for Grants of Probate or Letters of Administration.

1. Persons wishing to obtain grants of probate or letters of administration without the intervention of a proctor, solicitor, or attorney, must apply in person at the department for personal applications, and not by letter.

2. No such application will be received through an agent of any kind (whether paid or unpaid).

3. The applications of parties who are attended by a person acting or appearing to act as their adviser in the matter will not be entertained.

4. All fees are to be paid in advance in Probate Court stamps.

5. Applications which have in the first instance been made through a proctor, solicitor, or attorney at the Principal Registry, or at a District Registry, cannot be transferred to this department.

6. Applications for grants of probate or administration in cases which have already been before the Court (on motion or otherwise) will not be entertained at this department, but must be made through a proctor, solicitor, or attorney.

7. Whenever it becomes necessary, in the course of proceeding with an application which has been entertained at this department, to obtain the directions of the Court, the application will not be proceeded with, but must be placed in the hands of a proctor, solicitor, or attorney.

8. The papers necessary to lead the grant applied for will be prepared in this department. An applicant is, however, at liberty to bring such papers, or any of them, filled up, but not sworn to, and the same, if correct, may be received (the usual fee for perusal being charged). All further papers which may be required will be drawn in this department. Testamentary papers once deposited in this department will not be given out unless under special circumstances, and by permission of one of the Registrars.

9. When it is necessary to administer an oath or take an affirmation, the party shall be sworn or affirmed before some proper authority of the Principal Registry, or of a District Registry, unless otherwise permitted by one of the Registrars.

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10. Every applicant for a first grant of probate or letters of administration must produce a certificate of the death or burial of the deceased, or give a reason to the satisfaction of one of the Registrars for the non-production thereof.

11. Every applicant must be prepared with a reference to some person of position or character, to establish his or her identity.

12. The engrossments of wills and testamentary papers will be made in the Registry.

13. Every applicant for a grant of probate or letters of administration shall give under his or her hand a schedule of the property to be affected by the grant in the form hereunto annexed, marked A. (The necessary forms will be provided in the Registry.)

14. Legal advice is not to be given to applicants, either with respect to the property to be included in the above-mentioned schedule, or upon any other matter connected with the application, and the clerks in this department are only to be held responsible for embodying in a proper form the instructions given to them, but they will, as far as practicable, assist applicants by giving them information and directions as to the course which they must pursue.

15. A receipt or acknowledgment of each application will be handed to the applicant, and the production of such receipt will be required of the person who attends to obtain the grant when completed.

16. No clerk or officer of this department is to become surety to any administration bond.

17. All administration bonds in cases of personal applications are to be executed in this department, or in a District Registry; if executed in this department the bond must be attested by the chief clerk or senior clerk in attendance.

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RULES, ORDERS, AND INSTRUCTIONS

FOR THE DISTRICT REGISTRARS OF HER MAJESTY'S COURT OF PROBATE,

Made under the Provisions of the Statutes 20 & 21 *Vict. c.* 77, *and* 21 & 22 *Vict. c.* 95,

IN RESPECT OF

NON-CONTENTIOUS BUSINESS.

All rules, orders, and instructions heretofore made and issued for the District Registrars of her Majesty's Court of Probate in respect of non-contentious business shall be repealed, on and after the second day of March, 1863, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following rules, orders, and instructions in respect of non-contentious business shall take effect on and after the second day of March, 1863.

NON-CONTENTIOUS BUSINESS shall include all common form business as defined by the "Court of Probate Act, 1857," and the warning of caveats.

1. APPLICATION FOR PROBATE OR LETTERS OF ADMINISTRATION may be made at the Principal Registry in all cases. Application may also be made at a District Registry in cases where the deceased, at the time of his death, had a fixed place of abode within the district in which the application is made, and not otherwise.

2. Such applications may be made through a proctor, solicitor, or attorney, or in person by executors and parties entitled to grants of administration.

3. The District Registrar, before he entertains any application for probate or letters of administration, must ascertain that the deceased had, at the time of his death, a fixed place of abode within his district.

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4. The District Registrar is not to allow probate or letters of administration to issue until all the inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made in person by executors and others. The District Registrar is notwithstanding to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

5. No District Registrar or clerk in a District Registry shall directly or indirectly transact business for himself or as the proctor or solicitor of any other person in the District Registry to which he has been appointed.

AS TO PROBATE OF WILLS AND CODICILS AND LETTERS OF ADMINISTRATION, WITH THE WILL [OR WILL AND CODICILS] ANNEXED, WHERE THE WILLS AND CODICILS ARE DATED AFTER 31ST DECEMBER, 1837.

Execution of a Will.

6. Upon receiving an application for probate or letters of Administration with the will annexed, the District Registrar must inspect the will and each codicil, and see whether by the terms of the attestation clause (if any) it is shown that the same have been executed in accordance with the provisions of statutes 1 Vict. c. 26 and 15 Vict. c. 24.

7. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the District Registrar must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, sect. 9, and 15 Vict. c. 24, in reference to the execution were in fact complied with; and such affidavit must be engrossed and form part of the probate.

See amended rules, p. 724.

8. If on perusing the affidavits of both the subscribing witnesses it appear that the requirements of the statute were not complied with, the District Registrar must refuse probate.

9. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will or codicil has been duly executed, the District Registrar must transmit a statement of the matter to the Registrars of the Principal Registry, who may require the parties to bring the matter before the judge on motion.

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10. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the Will or codicil; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

Interlineations and Alterations.

11. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto.

12. When interlineations or alterations appear in the will (unless duly executed, or recited in or otherwise identified by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal, or when they are of but small importance and are evidenced by the initials of the attesting witnesses.

Erasures and Obliterations.

13. Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the probate.

14. In every case of words having been erased or obliterated which might have been of importance, an affidavit must be required.

Deeds, &c., referred to in a Will.

15. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of such deed, paper, memorandum, or other

document must be required, with a view to ascertain whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

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16. No deed, paper, memorandum, or other document can form part of a will unless it was in existence at the time when the will was executed.

Appearance of the Paper.

17. If there are any vestiges of sealing wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and, if not produced, its non-production must be accounted for.

Married Woman's Will.

18. In granting probate of a married woman's will made by virtue of a power or administration with such will annexed, the power under which the will purports to have been made must be specified in the grant.

Repealed. See p. 780.

Codicils.

19. The above rules and orders respecting wills apply equally to codicils.

Doubtful Cases.

20. If it be doubtful whether any will or codicil be entitled to probate, or whether any interlineation, alteration, erasure, or obliteration ought to prevail, or whether any deed, paper, memorandum, or other document ought to form part of a will or codicil, or if any doubt arise in consequence of the appearance of the paper, or on any other point, the District Registrar must communicate with the Registrars of the Principal Registry.

Letters of Administration with Will annexed.

21. The right of parties to letters of administration with the will annexed, and letters of administration with the will annexed de bonis non, depends so entirely upon the circumstances of each particular case taken in connection with the wording of the will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the District Registrars. Whenever the right of the party applying is at all

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questionable, a statement of the case, accompanied by a copy of the will, must be transmitted to the Registrars of the Principal Registry, who will advise thereon.

As to Probate of Wills, Codicils, and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.

Execution of a Will.

22. It is not necessary that a will, codicil, or testamentary paper dated before 1st January, 1838, should be signed by the testator or attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition must be clearly proved by circumstances.

23. A will, codicil, or testamentary paper, signed at the end of it by the testator and attested by two disinterested witnesses (although there be no clause of attestation) is primâ facie entitled to probate.

24. In cases, where a will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of one attesting witness, or produced it with his name already written or his mark already made, to one attesting witness, and afterwards produced it to the other attesting witness, provided that on each occasion he declared it to be his will, codicil, or testamentary disposition, or otherwise notified his intention that it should operate as such.

25. If the will, codicil, or testamentary paper is signed at the end of it by the testator but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

26. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested

person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

27. The circumstance of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him or her incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, codicil, or testamentary paper, the same, so far as regards his or her attestation, must be considered as unattested, and his or her evidence in support thereof will be inadmissible, unless he or she shall first release his or her interest thereunder.

28. The will, codicil, or testamentary paper should appear on the face of it to be a complete document; if an attestation clause or the word "witnesses" appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must primâ facie be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

Appearance of Paper.

29. Any appearance of an attempted cancellation of a testamentary paper by burning, tearing, obliteration, or otherwise, and every circumstance leading to a presumption of abandonment or revocation of such a paper on the part of the testator, must be accounted for or explained by affidavits. In such cases the testamentary paper and the evidence taken in support of it should be transmitted to the Registrars of the Principal Registry.

Alterations and Interlineations.

30. Alterations and interlineations made by the testator, if unattested, are to be proved by the affidavits of two persons as to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that such alterations and interlineations were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st December, 1837, are subject to the provisions of 1 Vict. c. 26.

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Deeds, &c., referred to in a Will or annexed to a Will.

31. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders, and instructions as to wills bearing date since the 31st December, 1837, will apply.

Republication by Codicil.

32. A will made before the 1st of January, 1838, is republished by a subsequent codicil thereto duly executed.

As to Letters of Administration.

33. The duties of the District Registrar in granting letters of administration are in many respects the same as in cases of probate. In both cases he must ascertain the time and place of the deceased's death, and the value of the property to be covered by the grant, and see that the applicant has been sworn as required by statute 55 Geo. 3, c. 184.

Notice to other Next of kin.

34. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the District Registrar may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

Limited Administrations.

35. Limited Administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the Judge.

36. No person entitled to a general grant of administration of the personal estate and effects of the deceased, will be permitted to take a limited grant, except under the direction of the Judge.

Administrations under Section 73.

37. Whenever the Court under sect. 73 appoints an administrator other than the person who, prior to the "Court of Probate Act, 1857," would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

Grants to an Attorney.

38. In the case of a person residing out of England, administration, or administration with the will annexed, may be granted to his attorney, acting under a power of attorney.

Grants of Administration to Guardians.

39. Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next of kin or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

40. In all cases of infants (*i.e.*, under the age of seven years) a guardian must be assigned by order of the Judge or of one of the Registrars of the Principal Registry; the Registrar's order is to be founded on an affidavit showing that the proposed guardian is either de facto next of kin of the infants, or that their next of kin de facto has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship.

41. Where there are both minors and infants, the guardian elected by the minors may act for the infants without being specially assigned to them, by order of the Judge or a Registrar of the Principal Registry, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the Judge or of a Registrar of the Principal Registry.

42. In all cases where grants of administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent Court, or are the testamentary guardians of the minors or infants.

Administrator's Oath.

43. The oath of administrators, and of administrators with the will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

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Administration Bonds.

44. Administration bonds are to be attested by an officer of the Principal Registry, by a District Registrar or his chief clerk, or by a commissioner or other person now or hereafter to be authorized to administer oaths under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95; but in no case are they to be attested by the proctor, solicitor, attorney, or agent of the party who executes them. The signature of the administrator or administratrix to such bonds, if not taken in the Principal or District Registry, must be attested by the same person who administers the oath to such administrator or administratrix.

45. In ordinary cases two sureties are to be required, but when the property is bonâ fide under the value of fifty pounds one surety only may be taken to the administration bond.

46. In all cases of limited or special administration two sureties are to be required to the administration bond (unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of or dealt with by the administrator by means of the grant. The alleged value of such property is to be verified by affidavit if required.

47. The administration bond is, in all cases of limited or special administrations, to be prepared in the District Registry.

48. The District Registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

Justification of Sureties.

49. When any person takes letters of administration in default of the appearance of persons cited, but not personally served with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the Registry, and the sureties to the administration bond must justify.

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Last Wills.

50. The District Registrar is not, in any case in which a will apparently duly executed has been produced to him for probate or for administration with the will annexed, to grant probate of any former will, or administration with any former will annexed, or administration to the deceased, as having died intestate, without an order of the Judge or of one of the Registrars of the Principal Registry, showing that the last will is not entitled to probate. In the absence of such order the District Registrar is to communicate with the Registrars of the Principal Registry.

Time of Issuing Grant.

51. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of one of the Registrars of the Principal Registry.

52. No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the Judge, or by order of one of the Registrars of the Principal Registry.

53. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified by the practitioner to the District Registrar. Should the certificate be unsatisfactory, or the case be one of personal application, the District Registrar is to require an affidavit, or to communicate with the Registrars of the Principal Registry.

Filling up Grant.

54. Every grant of probate or of letters of administration issued from a District Registry is to be filled up therein, and any former grant which has been revoked or has ceased is to be cleared off therein.

Notices of Applications.

55. Notices of applications for grants of probate or administration, with the will annexed, transmitted by the District Registrar to the Registrars of the Principal Registry, are to contain (in addition to the particulars specified in sect. 49 of the Court of Probate Act, 1857,) an extract of the words of the will or codicil by

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which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration.

56. Notices of application are to set forth the names and interests of all persons who, according to the practice of the Court, would have a prior right to the applicant, and to show how such prior right is cleared off. In case the persons or any of them have renounced, the date of his or her renunciation must be stated. If the applicant claims as the representative of another person, the date and particulars of the grant to him must appear.

Oath of Executors and Administrators.

57. The usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the Registry.

58. The draft oaths to lead grants of special or limited probate or administration with or without the will annexed are to be transmitted by the District Registrar to the Registrars of the Principal Registry, in order to their being settled, and no special or limited grant is to issue until the draft oath to lead the same has been settled by a Registrar of the Principal Registry.

Identity of Parties.

59. The District Registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

Testamentary Papers to be marked.

60. Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such executor or administrator and by the person before whom he is sworn.

Renunciations.

61. No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character.

Revocation and Alteration of Grants.

62. Grants of probate or letters of administration can only be revoked by order of the Judge or of one of the Registrars of the Principal Registry.

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63. No grant of probate or letters of administration is to be altered by a District Registrar, without an order of a Registrar of the Principal Registry having been previously obtained. In case the name of the testator or intestate requires alteration, the notice of application must be renewed, and the alteration ordered is not to be made by the District Registrar until the usual certificate on such notice has been received from the Principal Registry.

Affidavits.

Amended. See p. 780.

64. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.

65. In every affidavit made by two or more persons the names of the several persons making it are to be written in the jurat.

66. No affidavit will be admitted in any matter in the Court of probate of which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure.

67. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the District Registrar, Commissioner, or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature, in the presence of the District Registrar, Commissioner, or other authority before whom the affidavit was made.

68. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a partner or clerk of his proctor, solicitor, or attorney.

69. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

70. In every case where an affidavit is made by a subscribing witness to a will or codicil, such subscribing witness shall depose as to the mode in which the said will or codicil was executed and attested.

71. The District Registrars are not to allow any affidavit to be filed (unless with the concurrence of the Registrars of the Principal Registry) which is not fairly and legibly written, or in which there is any interlineation, the extent of which at the time the affidavit was made is not clearly shown by the initials of the Commissioner or other person before whom it was sworn.

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Caveats.

72. Any person intending to oppose the issuing of a grant of probate or letters of administration must, either personally or by his proctor, solicitor, or attorney, enter a caveat in the Principal Registry, or in the proper District Registry.

73. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time.

74. The District Registrar shall, immediately upon a caveat being entered, send a copy thereof to the Registrars of the Principal Registry, and also to the Registrar of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

75. No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in the Principal Registry.

76. Caveats shall be warned from the Principal Registry only.

77. After a caveat has been entered, the District Registrar is not to proceed with the grant of probate or administration to which it relates until it has expired or been subducted, or until he has received notice from the Principal Registry that the caveat has been warned and no appearance given, or that the contentious proceedings consequent on the caveat have terminated.

78. The further rules in respect to caveats will be found in the "Rules, Orders, and Instructions for the Registrars of the Principal Registry."

Citations and Subpœnas.

79. Citations and subpœnas can be issued from the Principal Registry only, and the rules applicable to them will be found in the "Rules, Orders, and Instructions for the Registrars of the Principal Registry."

80. No grants are to issue from a District Registry after a citation without the production of an office copy of the decree or order of the Judge or of one of the Registrars of the Principal Registry authorizing the same.

Blind and Illiterate Testators.

81. The District Registrars are not to allow probate of the will, or administration with the will annexed, of any blind or obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the testator before its execution, or that the testator had at such time knowledge of its contents. When such information is not forthcoming,

the District Registrars are to communicate with the Registrars of the Principal Registry.

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Alterations in Grants, &c.

82. Whenever the value of the personal estate and effects of a deceased person is re-sworn under a different amount, or any alteration is made in a grant, or a renunciation is filed, notice of such re-swearing, alteration, or renunciation is without delay to be forwarded by the District Registrar to the Registrars of the Principal Registry, but no fee shall be payable in respect of any such notice.

Lists of Grants.

83. The lists of grants of probate and administration required to be furnished by the District Registrars under sect. 51 of the "Court of Probate Act, 1857," are to be furnished on the first and every other Thursday in the month, and are to contain the name of the Registry in which each grant was made; and the Christian and surname of each testator and intestate.

84. Every such list of grants furnished by the District Registrar is to be accompanied by a copy of the record of each grant mentioned in it. The record, besides stating the necessary particulars of the grant to which it refers, is to contain the place and time of death of the testator or intestate; the names and description of each executor or administrator; the date of each grant; and the sum under which the value of the personal estate and effects is sworn, and in cases of administrations the names and description of the sureties.

85. Within four days from the end of each month each District Registrar is to forward to the Principal Registry a return, arranged alphabetically, of all grants of probate or letters of administration passed at his District Registry during the preceding month.

Grants for Property in the United Kingdom, &c.

86. Whenever a grant of probate or of letters of administration is made under statute 21 and 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office that the testator, or intestate, died domiciled in England, and that he was possessed of personal estate in Scotland other than that excluded by 22 and 23 Vict. c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, a separate affidavit and schedule must also be filed. Upon all such grants a note or

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memorandum must also be written and signed by the District Registrar to the effect that the testator or intestate died domiciled in England.

87. Grants of probate and administration made in Ireland and confirmations granted in Scotland must be taken to the Principal Registry, and not to a District Registry, to be sealed with the seal of the Court of Probate, in order to the same having force and effect in England.

Notices to Queen's Proctor.

88. In all cases where application is made for letters of administration (with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, notice of such application is to be given to Her Majesty's Procurator-General, (or in case the deceased died domiciled within the Duchy of Lancaster, to the solicitor for the Duchy in London,) in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take.

89. In the case of persons dying intestate without any known relation, a citation must be issued from the Principal Registry against the next of kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased. See the rules, orders, and instructions for the Registrars of the Principal Registry.

Transmission of Papers.

90. When motions are to be made before the Judge in Court, with regard to any application for probate or administration at a District Registry, the District Registrar is to transmit all original papers and documents to the Principal Registry, and the same, after the directions of the Court have been taken, will, on the application of the parties, be returned to the District Registrar together with an office copy of the decree of the Judge.

91. Original papers are also to be forwarded to the Principal Registry whenever an inspection of them is necessary, in order to enable the Registrars to answer the questions submitted to them by the District Registrar.

92. Original papers and documents may be transmitted by the District Registrars to the Registrars of the Principal Registry through the Post Office. Such letters or packets are to be superscribed with the words, "On Her Majesty's Service," and may be registered, if thought necessary.

Probate Copies of Wills.

93. The District Registrar is to take care that the copies of wills and affidavits to be annexed to the probate or letters of administration are fairly and properly written, and is to reject those which are otherwise.

Office Copies.

94. Office copies of wills, and other documents furnished in a District Registry, will not be collated with the original will or other document, unless specially required. Every copy so required to be examined, shall be certified under the hand of the District Registrar to be an examined copy.

95. The seal of the Court is not to be affixed to any office copy of a will, or other document, unless the same has been certified to be an examined copy.

Attendances with Documents.

96. If a will or other document filed in a District Registry is required to be produced at any place within three miles of that Registry, application must be made for that purpose not later than the day previously to that named for its production.

97. If a will or other document filed in a District Registry is required to be produced at any place beyond the above distance, application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place.

Doubtful and Difficult Cases.

98. The District Registrars are in every case of doubt or difficulty to communicate with the Registrars of the Principal Registry.

TAXING BILLS OF COSTS.

99. All bills of costs are to be referred to the Registrars of the Principal Registry for taxation, and no special order shall be required for the purpose.

100. The rules in respect to taxing bills of costs will be found in the "Rules, Orders, and Instructions for the Registrars of the Principal Registry."

101. *See* page 788.

102. ,, ,, 788.

103. ,, ,, 790.

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FORMS OF INSTRUMENTS

To be adopted in the DISTRICT REGISTRIES *attached to the Court of Probate, as nearly as the Circumstances of each Case will allow.*

No. 1.—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Probate.*

The District Registry at .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of probate of the will bearing date the day of 18 [and codicil *or* codicils bearing date the day of 18] of A. B., late of deceased, who died on or about the day of 18 at having at the time of his death a fixed place of abode at within the district of by C. D. of the executor [*or* by E. F. of the proctor, solicitor, *or* attorney of C. D. the executor] named in the said will [*or* codicil], in the words following:

[*Here insert the extract from the will or codicil.*]

(Signed) G. H.,
District Registrar.

No. 1 *a*.—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration with the will annexed.*

The District Registry at .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration with the will annexed, the said will bearing date the day of 18 [*or* will and codicil *or* codicils annexed, the said will bearing date the day of 18 and the said codicil bearing date the day of 18] of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 at having at the time of his death a fixed place of abode at within the district of by C. D. of the residuary legatee [*or as the case may be*] named in the said will [*or* by E. F. of the proctor, solicitor, *or* attorney of C. D., the residuary legatee named in the said will], in the words following:

[*Here insert the extract from the will or codicil.*]

(Signed) G. H.,
District Registrar.

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No. 1 *b.*—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration.*

The District Registry at .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 at intestate, having at the time of his death a fixed place of abode at within the district of a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece [*or as the case may be*] by C. D. of one of the lawful cousins german and next of kin of the deceased [*or* by E. F. of the proctor, solicitor, *or* attorney of C. D., one of the, &c.].

(Signed) G. H.,
District Registrar.

No. 1 *c.*—*Notice of the entry of a Caveat in a District Registry.*

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been entered in the District Registry attached to her Majesty's Court of Probate at , of the following tenor [*set out the caveat at full length*].

This day of 18 .

(Signed) C. D.,
District Registrar.

No. 2.—*Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after* 31*st December*, 1837.

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

I C. D. of (1) make oath [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that I am one of the subscribing witnesses to the last will and testament [*or* codicil, *as the case may be*], of A. B., late of in the county of deceased, the said will [*or* codicil] being now hereunto annexed, bearing date , and that the said testator executed the said will [*or* codicil] on the day of the date thereof, by signing his name at the foot or end thereof [*or* in the testimonium clause thereof, *or* in the attestation clause thereto, *or as the case may be*], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we

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thereupon attested and subscribed the said will [*or* codicil] in the presence of the said testator. (Signed) C. D.

Sworn at on the day of 18 .

Before me [*person authorized to administer oaths under the Act*].

(1) Insert the names, residence, and title or addition of the deponent.

N.B. If the signature is in testimonium clause or attestation clause, insert "meaning and intending the same for his final signature to his will."

No. 3.—*Affidavit for the Commissioners of Inland Revenue.—For Executors.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

I C. D. of (1) make oath [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that I am one of the executors [*or* the executor] named in the last will and testament (2) of A. B., late of deceased; that the said deceased died on the day of one thousand hundred and at (3) , and that the said deceased had at the time of his death a fixed place of abode at within the district of , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially (*if the deceased died on or after 3rd April*, 1860, *add*, "but inclusive of all personal estate and effects which the said deceased, under any authority enabling him (*or* her) to dispose of the same, as he (*or* she) might think fit, has disposed of by his (*or* her) said will,") [*if any leaseholds insert clause No. 1 given below*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [*if no leaseholds insert clause No. 2 given below*].

(Signed) C. D.

Sworn at on the day of .

Before me [*person authorized to administer oaths under the Act*].

(1) Insert the names, residence, and title, or addition of the deponent.

(2) Insert codicils, if any.

(3) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B.—Forms for the two leasehold clauses to be printed on the back of the affidavit.

Form of Leasehold Clause No. 1.

"Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives."

Form of Leasehold Clause No. 2.

"And I [*or* we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, either absolute or determinable on a life or lives, to the best of my [*or* our] knowledge, information, and belief."

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No. 3 *a*.—*Affidavit for the Commissioners of Inland Revenue.—For Administrators with the Will annexed.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

I C. D. of (1) the party applying for letters of administration with the will (2) annexed of the personal estate and effects of A. B., late of deceased, make oath [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that the said deceased died on the day of one thousand hundred and at (3) , having at the time of his death a fixed place of abode at , within the district of , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration with the said will (2) annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially (*if the deceased died on or after 3rd April*, 1860, *add* "but inclusive of all personal estate and effects which the said deceased, under any authority enabling him (*or* her) to dispose of the same, as he (*or* she) might think fit, has disposed of by his (*or* her) said will)," [*if leaseholds insert clause No. 1 given in the preceding page*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [*if no leaseholds insert clause No. 2 in the preceding page*].

(Signed) C. D.

Sworn at on the day of 18 .

Before me [*person authorized to administer oaths under the Act*].

(1) Insert the names, residence, and title, or addition of the deponent.
(2) Insert codicils, if any.
(3) Insert the place of death, or set forth the reason why the same cannot be furnished.

N.B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

No. 3 *b*.—*Affidavit for the Commissioners of Inland Revenue.—For Administrators.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A.B. deceased.

I C. D. of (1) the party applying for letters of administration of the personal estate and effects of A. B., late of , make

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oath [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*]: That the said deceased died on the day of one thousand hundred and at (2) , having at the time of his death a fixed place of abode at , within the district of , and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [*if leaseholds insert clause No.* 1 *given in page* 696], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [*if no leaseholds insert clause No.* 2 *given in page* 696].

(Signed) C. D.

Sworn at on the day of 18 .

Before me [*person authorized to administer oaths under the Act*].

(1) Insert the names, residence, title, or addition of the deponent.

(2) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

No. 4.—*Oath for an Executor.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

I C. D. of (1) in the county of make oath and say [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that I believe the paper writing [*or* the paper writings] hereto annexed and marked by me to contain the true and original last will and testament (2) [*or* last will and testament with codicils] of A. B. late of in the county of deceased, and that I am the sole executor [*or* one of the executors (3)] therein named [*or* executor according to the tenor thereof, executor during life, executrix during widowhood, *or as the case may be*], and that I will well and faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [*or* will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of all and singular the said estate and effects, and render a just and true account thereof, whenever required by law so to do; that the testator died at in the county of on the day of 18 ; and that the said testator had at the time of his death a fixed place of abode at , within the district of , and that the whole of the personal estate and

effects of the said testator does not amount in value to the sum of pounds, to the best of my [*or* our] knowledge, information, and belief.

(Signed) C. D.

Sworn at on the day of 18 .

Before me [*person authorized to administer oaths under the Act*].

(1) Insert the names, residence, and title, or addition of the deponent, and relationship, if any, of the executor to the testator.

(2) Each testamentary paper to be marked by the persons sworn and the person administering the oath.

(3) When several executors are appointed, and some or one of them only sworn, a memorandum should be made in the margin of the oath that power is to be reserved to the other executors, or that they have renounced.

No. 5.—*Oath for Administrators with the Will.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

I C. D. of (1) in the county of make oath and say [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that I believe the paper writing [*or* the paper writings] hereunto annexed and marked by me to contain the true and original last will and testament [*or* the last will and testament with codicils (2)] of A. B. late of in the county of deceased, and that E. F. [*insert his relationship, if any, to the deceased*] the sole executor therein named survived the said deceased, and is since dead without having taken probate thereof [*or as the fact may be*], and that I am the [*insert the relationship to deceased, if any*] residuary legatee in trust named therein [*or as the fact may be*], and that I will well and faithfully administer the personal estate and effects of the said deceased by paying his just debts and the legacies contained in his will [*or* will and codicils], and distributing the residue of his estate according to law; that I will exhibit a true and perfect inventory of all and singular the said personal estate and effects, and render a just and true account thereof, whenever required by law so to do; that the testator died at on the day of 18 , that the said testator at the time of his death had a fixed place of abode at , within the district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

(Signed) C. D.

Sworn at on the day of 18 .

Before me [*person authorized to administer oaths under the Act*].

(1) Insert the names, residence, and title, or addition of the deponent.

(2) Each testamentary paper to be marked by the persons sworn and the person administering the oath.

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No. 6.—*Oath for Administrators.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

I C. D. of (1) in the county of make oath and say [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that A. B. late of deceased died intestate a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece [*or as the case may be*], and that I am the lawful cousin german [*or as the case may be*] and one of the next of kin (2) [*or* only next of kin] of the said deceased [*as the case may be*]: that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate and effects according to law; that I will exhibit a true and perfect inventory of all and singular the said estate and effects, and render a just and true account thereof, whenever required by law so to do; that the said deceased died at on the day of 18 , that at the time of his death the said deceased had a fixed place of abode at , within the district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

(Signed) C. D.

Sworn at on the day of 18 .

Before me [*person authorized to administer oaths under the Act*].

(1) Insert the names, residence, and title, or addition of the deponent.
(2) In all cases, where applicable, add "only next of kin" or "one of the next of kin."

No. 7.—*Probate.*

In her Majesty's Court of Probate.

The District Registry at .

Sworn under £

Extracted by

BE IT KNOWN, that on the day of 18 , the last will and testament [*or* the last will and testament with codicils] hereunto annexed of A. B., late of deceased, who died on at , and who at the time of his death had a fixed place of abode at , within the district of , was proved and registered in the District Registry attached to her Majesty's Court of Probate at , and that administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to C. D. the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or* will and codicils], and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,

(L.S.) District Registrar.

Non-Contentious Business.

No. 8.—*Letters of Administration with the Will annexed.*

In her Majesty's Court of Probate.

The District Registry at .

BE IT KNOWN, that A. B., late of in the county of deceased, who died on the day of , at , and who, at the time of his death, had a fixed place of abode at , within the district of , made and duly executed his last will and testament (*or* will and codicil thereto) and did therein name (*or* did not therein name any) executor [*or as the case may be*]. And BE IT FURTHER KNOWN, that on the day of 18 , letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having been first sworn well and faithfully to administer the same by paying the just debts of the said deceased, and the legacies contained in his will (*or* will and codicils) and distributing the residue of his estate according to law, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by *Sworn under* £

(Signed) E. F.,
(L.S.) District Registrar.

No. 9.—*Letters of Administration.*

In her Majesty's Court of Probate.

The District Registry at .

BE IT KNOWN, that on the day of 18 , letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on 18 , at intestate, and had, at the time of his death, a fixed place of abode at , within the district of , were granted by her Majesty's Court of Probate to C. D. the lawful widow and relict [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by *Sworn under* £

(Signed) E. F.,
(L.S.) District Registrar.

Non-Contentious Business.

No. 10.—*Double Probate.*

In her Majesty's Court of Probate.

The District Registry at .

Extracted by

Sworn under £

BE IT KNOWN, that on the day of 18 , the last will and testament [*or* the last will and testament with codicils] hereunto annexed, of A. B., late of deceased, who died on at , and had, at the time of his death, a fixed place of abode at , within the district of was proved and registered in the District Registry attached to her Majesty's Court of Probate at , and that administration of all and singular the personal estate and effects of the said deceased, was granted by the aforesaid Court to C. D., one of the executors named in the said will [*or* codicil], he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in his will (*or* will and codicils), and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will. And BE IT FURTHER KNOWN, that on the day of 18 , the said will of the said deceased was also proved in the said District Registry, and that the like administration of all and singular the personal estate and effects of the said deceased, was granted by the aforesaid Court to the said E. F., he having been first duly sworn well and faithfully to administer the same, by paying the just debts of the said deceased and the legacies contained in his will (*or* will and codicils), and to exhibit a true and perfect inventory of all and singular the said estate and effects of the said deceased, and to render a just and true account thereof whenever required by law so to do.

Former grant, Jan. 18 , under the same sum.

(Signed) G. H.,
(L.S.) District Registrar.

No. 11.—*Exemplification of Probate or of Letters of Administration with Will annexed.*

In her Majesty's Court of Probate.

The District Registry at .

Extracted by

Sworn under £

BE IT KNOWN, that upon search being made in the District Registry attached to her Majesty's Court of Probate at , it appears that on the day of in the year of our Lord 18 , the last will and testament with codicils of A. B., late of deceased, who died at on or about 18 , and had, at the time of his death, a fixed place of abode at , within the district of , was proved by C. D., the executor named therein [*or* letters of administration with the last will and testament and codicils annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the], and which probate [*or* letters of administration] now remain of

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record in the said District Registry. The true tenor of the said will (and codicils) is in the words following, to wit:

[*Here follow the will, codicils, and such affidavits as are registered.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and the sealing of these presents, this day of in the year of our Lord 18 .

(Signed) E. F.,
(L.S.) District Registrar.

No. 12.—*Exemplification of Administration.*

In her Majesty's Court of Probate.

The District Registry at .

Extracted by *Sworn under £*

BE IT KNOWN, that upon search being made in the District Registry attached to her Majesty's Court of Probate at it appears that on the day of in the year of our Lord 18 , letters of administration of all and singular the personal estate and effects of A. B., late of who died at on or about , and had, at the time of his death, a fixed place of abode at , within the district of , were granted to C. D., the [*or* one of the] of the said deceased, and which letters of administration now remain of record in the said District Registry. The true tenor of the said letters of administration is in the words following, to wit:

[*Here the letters of administration are to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and sealing of these presents, this day of in the year of our Lord 18 .

(Signed) E. F.,
(L.S.) District Registrar.

No. 13.—*Special Administration with the Will of a Married Woman annexed.*

In her Majesty's Court of Probate.

The District Registry at .

Extracted by *Sworn under £*

BE IT KNOWN, that A. B. [wife of C. B.], late of in the county of died on the day of 18 , at , having at the time of her death a fixed place of abode at , within the district of , and having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 18 , and of all other powers and authorities her enabling, made and executed her last will and testament

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bearing date the day of 18 , with a codicil thereto, bearing date the day of 18 , (*or as the case may be,*) and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And BE IT ALSO KNOWN, that on the day of 18 , letters of administration (with the said will (and codicil) annexed) of all and singular the personal estate and effects of the said deceased were granted and committed at the District Registry attached to her Majesty's Court of Probate at to the said C. B., he having been first sworn well and faithfully to administer the same, by paying the just debts of the said deceased, and the legacies contained in her will and codicil, and distributing the residue of her estate according to law, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) J. S.,
(L.S.) District Registrar.

No. 14.—*Limited Probate of a Married Woman's Will.*

In her Majesty's Court of Probate.

The District Registry at .

Extracted by

Sworn under £

BE IT KNOWN, that A. B. [wife of C. B.], late of in the county of died on the day of 18 , at , having at the time of her death a fixed place of abode at , within the district of , and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18 , and made between the said C. B. therein described of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G. of in the county of spinster, of the second part, and E. F. of in the same county, gentleman, and H. I. of gentleman, of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and , (with codicils thereto bearing date respectively [*insert date*],) and thereof appointed L. M. and O. P. executors.

And BE IT ALSO KNOWN, that on the day of 18 , the said last will and testament (with codicils) of the said A. B., deceased, hereunto annexed, was proved and registered in the District Registry attached to her Majesty's Court of Probate at and that probate of the said will (and codicils) of the said deceased, limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will (and codicils) appointed or disposed of accordingly, but no further or otherwise, was granted by the aforesaid Court to

the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will (and codicils), and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

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(Signed) J. S.,
(L.S.) District Registrar.

No. 15.—*Special Administration of the rest of the Goods of a Married Woman.*

In her Majesty's Court of Probate.

The District Registry at .

BE IT KNOWN, that A. B., wife of C. B., late of in the county of , died on the day of 18 , at , having at the time of her death a fixed place of abode at , within the district of , and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement bearing date day of 18 , and made between the said C. B., therein described, of in the county of gentleman of the first part, the said deceased, by her then name and description of A. F. of in the county of widow, of the second part, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 , and thereof appointed E. F. and G. H. executors. And BE IT ALSO KNOWN, that on the day of 18 , probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted at the District Registry attached to her Majesty's Court of Probate at to the said E. F. and G. H., the executors named in the said will. And BE IT FURTHER KNOWN, that on the day of 18 , letters of administration of the rest of the personal estate and effects of the said A. B. deceased were granted at the said District Registry to the said C. B., the lawful husband of the said deceased, he having been first sworn well and faithfully to administer the same, by paying the just debts of the said deceased, and distributing the residue of her said estate and effects according to law, and to exhibit a true and perfect inventory of the rest of her estate and effects, and also to render a just and true account thereof whenever required by law so to do.

Extracted by *Sworn under* £

(Signed) R. S.,
(L.S.) District Registrar.

Non-Contentious Business.

No. 16.—*Administration de Bonis non.*

In her Majesty's Court of Probate.

The District Registry at .

Extracted by

Sworn under £

BE IT KNOWN, that A. B., late of in the county of deceased, died on 18 , at intestate, and had at the time of his death a fixed place of abode at within the district of , and that since his death, to wit, in the month of 18 , letters of administration of all and singular his personal estate and effects were committed and granted at the District Registry attached to her Majesty's Court of Probate at to C. D. [*insert the Court from which the grant issued and the relationship or character of administrator*], (which letters of administration now remain of record in the said District Registry,) who, after taking such administration upon him, intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 18 , letters of administration of the said personal estate and effects so left unadministered were granted at the said District Registry to he having been first sworn well and faithfully to administer the same, by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
(L.S.) District Registrar.

No. 17.—*Administration Bond.*

KNOW ALL MEN by these presents, that we, A. B. of , C. D. of , and E. F. of , are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and

The condition of this obligation is such, that if the above-named A. B. [*or* K. B., wife of the above-named A. B.], the [*here state the character in which the party takes the grant*] of I. J., late of deceased who died on the day of , and the intended administrator of all and singular the personal estate and effects of the said deceased, [left unadministered by] do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased [so left unadministered] which have or shall come to hands, possession, or knowledge, or into the hands

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and possession of any other person for and the same so made do exhibit or cause to be exhibited into the District Registry attached to her Majesty's Court of Probate at whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said , or into the hands or possession of any other person or persons for , do well and truly administer according to law; (that is to say,) do pay the debts which did owe at decease, and further do make or cause to be made a just and true account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under the Act of Parliament, intituled "*An Act for the better settling of Intestates' Estates*"; and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors, or other persons therein named, do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said , being thereunto required, do render and deliver the letters of administration granted to him (approbation of such testament being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the within-named A. B., C. D., and E. F., in the presence of

M. N.,
District Registrar at .
[*or* a Commissioner.]

No. 18.—*Administration Bond for Administrators with the Will.*

KNOW ALL MEN by these presents, that we, A. B. of , C. D. of , and E. F. of , are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such that if the above-named A. B. [*or* K. B. wife of the above-named A. B.], the [*here state the character in which the party takes the grant*] of I. J., late of deceased, and who died on the day of and the intended administrator with the will of all and singular the personal estate and effects of the said deceased do, when lawfully called on in that behalf, make or cause to be made a true and

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perfect inventory of all and singular the personal estate and effects of the said deceased [left unadministered by] which have or shall come to hands, possession, or knowledge, and the same so made do exhibit or cause to be exhibited into the District Registry attached to her Majesty's Court of Probate, at whenever required by law so to do, and the same personal estate and effects [so left unadministered] do well and truly administer (that is to say,) do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so to committed, as far as the said personal estate and effects [so left unadministered] will thereto extend, and the law charge , and further do make or cause to be made a just and true account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and affects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the within-named A. B., C. D., and E. F., in the presence of

M. N.,
District Registrar at .
[*or* a Commissioner.]

No. 19.—*Declaration of the Personal Estate and Effects of a Testator or an Intestate.*

In the goods of A. B. deceased.

A true declaration of all and singular the personal estate and effects of A. B., late of , deceased, who died on the day of at , and had at the time of his death a fixed place of abode at , within the district of , which have at any time since his death come to the hands, possession, or knowledge of C. D., the intended administrator with the will [*or* administrator] of the said estate and effects, made and exhibited upon and by virtue of the corporal oath [*or* solemn affirmation] of the said C. D., follows, to wit:

	£	*s.*	*d.*
First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to			
[*The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.*			

Household goods, furniture, plate, linen, china, jewellery, and trinkets, &c. may be described in general terms, the name and address of the licensed appraiser who valued them being added.

Where leasehold estates are described briefly, it will be necessary to state the valuation. But if they are described particularly, the valuation will not be required.

Policies of insurance and mortgages must be sufficiently described to identify them.]

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Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possessions, or knowledge of this declarant, save as is herein-before set forth.

(Signed) C. D.

On the day of (1) 18 , the said C. D. was duly sworn to [*or* being solemnly, sincerely, and truly declared and affirmed] the truth of the above declaration, at in the country of ;

Before me [*person authorized to administer oaths under the Act*].

(1) The affirmation must be made according to the form of words prescribed by the statute applicable to the particular case.

No. 20.—*Justification of Sureties.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

We, C. D. of , and E. F. of , jointly and severally make oath, [*or* solemnly, sincerely, and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case,*] that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself further make oath [*or as before*], that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of ; and I the said E. F. for myself further make oath [*or as before*], that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of pounds.

Sworn by the said C. D. and E. F. at on the day of 18 .

Before me [*person authorized to administer oaths under the Act*].

No. 21.—*Election by Minors of a Guardian.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

Whereas A. B., late of in the county of deceased, died on or about the day of 18 , at having at the time of his death a fixed place of abode at , within the district of and intestate, a widower, leaving C. D., E. F., and

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G. H. his natural and lawful and only children, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant age of six years only:

Now we, the said C. D. and E. F., do hereby make choice of and elect K. L., our lawful *maternal* uncle [*or as the case may be*] and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B. deceased to be granted to him, for our use and benefit, and until one of us shall attain the age of twenty-one years [*or* for the purpose of renouncing for us, and on our behalf, all our right, title, and interest to and in the letters of administration, &c., *as the case may be*] [*add, in cases where a proctor, solicitor, or attorney appears for the minors,*] and we hereby appoint M. N. of our proctor, solicitor, *or* attorney, to file or cause to be filed this our election for us in the District Registry attached to her Majesty's Court of Probate at .

In witness whereof we have hereunto set our hands and seals this day of in the year 18 .

C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the within-named C. D. and E. F., *in the* presence of [*one disinterested witness sufficient.*]

No. 22.—*Renunciation of Probate and Administration with the Will annexed.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

Whereas A. B., late of in the county of deceased, died on the day of 18 , at , and had at the time of his death, a fixed place of abode at , within the district of ; and whereas he made and duly executed his last will and testament [*or* will and testament with a codicil thereto] bearing date the day of 18 (1), and thereof appointed C. D. executor and residuary legatee in trust [*or as the case may be*]:

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein, with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [*and* codicils, *if any*], and to the letters of administration with the said will [*and* codicils, *if any,*] annexed, of the personal estate and effects of the said deceased, [*add in cases where a proctor, solicitor, or attorney is to appear for the person renouncing*] and I hereby appoint E. F. of my proctor, solicitor, *or* attorney, to file or cause to be

filed this renunciation for me in the District Registry attached to her Majesty's Court of Probate at .

In WITNESS whereof I have hereto set my hand and seal, this day of 18 .

C. D. (L.S.)

Signed, sealed, and delivered by the said C. D. in the presence of G. H.,

[*One disinterested witness sufficient.*]

(1) If there are codicils their dates should be also inserted.

No. 23.—*Renunciation of Administration.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

WHEREAS A. B., late of (1) in the county of deceased, died on the day of 18 , at intestate, a widower, and had, at the time of his death, a fixed place of abode at , within the district of ; and whereas I, C. D., am his natural, lawful, and only child [*or as the case may be*] and next of kin [*or one of next of kin*]:

Now I, the said C. D. , do hereby expressly renounce all my right and title to the letters of administration of the personal estate and effects of the said deceased, [*add in cases where a proctor, solicitor, or attorney is to appear for the person renouncing*] and I hereby appoint E. F. of my proctor, solicitor, *or* attorney, to file or cause to be filed this renunciation for me in the District Registry attached to her Majesty's Court of Probate at .

In WITNESS whereof I have hereto set my hand and seal, this day of 18 .

C. D. (L.S.)

Signed, sealed, and delivered by the said C. D. in the presence of G. H.,

[*One disinterested witness sufficient.*]

(1) This to be varied so as to show the kindred or interest of the person renouncing.

No. 24.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

(For Executors.)

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A.B. deceased.

I, C.D. of (1) make oath (*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*), that I am one of

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the executors (*or as the case may be*) named in the last will and testament, with codicils thereto, of A.B., late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at having at the time of his death a fixed place of abode at (2) within the district of and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which a probate of the said will and codicils is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if the deceased died on or after 3rd April*, 1860, *add*, but including all personal estate and effects which the said deceased under any authority enabling him (*or* her) to dispose of the same as he (*or* she) might think fit, and has disposed of by his (*or* her) said will] (3), and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief (4). And further make oath (*or* solemnly, sincerely, and truly declare and affirm) that a part of the said personal estate and effects of the said deceased, under the value of pounds, is in England, and a further part thereof, amounting in value to the sum of , and more particularly mentioned and set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not, at the time of his death, possessed of or entitled to any personal estate and effects in Ireland, to the best of knowledge, information, and belief. [*Or end thus:* And that a further part thereof, amounting in value to the sum of (5) is in Ireland, to the best of knowledge, information, and belief.]

Sworn at on the day of 18 . } (Signed) C.D.
Before me
[*person authorized to administer oaths under the Act*].

(1) Insert the names, residence and title, or addition of the deponent.
(2) Insert place of death, or set forth the reason why the same cannot be furnished.
(3) If any leaseholds, insert clause No. 1, at page 696.
(4) If no leaseholds, insert clause No. 2, at page 696.
(5) If there is personal estate in Ireland, a further affidavit, in Form No. 27, is to be made by executors and administrators.

No. 25.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

(For Administrators with Will.)

In her Majesty's Court of Probate.
The District Registry at .
In the goods of A.B. deceased.

I, C. D. of (1) the party applying for letters of administration (with the will annexed) of the personal estate and effects

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of A.B., late of deceased, make oath (*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*), that the said deceased died on or about the day of one thousand hundred and at having at the time of his death a fixed place of abode at within the district of (2) , and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which letters of administration with the said will annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if the deceased died on or after 3rd April*, 1860, *add*, but including all personal estate and effects which the said deceased under any authority enabling him (*or* her) to dispose of the same as he (*or* she) may think fit, and has disposed of by his (*or* her) said will] (3), and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief (4). And further make oath (*or* solemnly, sincerely, and truly affirm and declare) that a part of the said personal estate and effects of the said deceased, under the value of is in England, and a further part thereof, amounting in value to the sum of and more particularly mentioned and set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not, at the time of his death, possessed of or entitled to any personal estate and effects in Ireland, to the best of knowledge, information, and belief. [*Or end thus:* And that a further part thereof, amounting in value to the sum of (5) is in Ireland, to the best of knowledge, information, and belief.]

Sworn at on the }
day of 18 . } (Signed) C.D.
Before me
[*person authorized to administer oaths under the Act*].

(1) Insert the names, residences and titles, or addition of the deponent.
(2) Insert the place of death, or set forth the reason why the same cannot be furnished.
(3) If any leaseholds, insert clause No. 1, at page 696.
(4) If no leaseholds, insert clause No. 2, at page 696.
(5) If there is personal estate in Ireland, a further affidavit, in Form No. 27, must be made by the executors or administrators.

No. 26.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

(For Administrators.)

In her Majesty's Court of Probate.
The District Registry at .

In the goods of A.B. deceased.

I, C.D. of (1) the party applying for letters of administration of the personal estate and effects of A.B., late of in

Non-Contentious Business.

the county of deceased, make oath (*or* solemnly, sincerely, and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case*), that the said deceased died on or about the day of one thousand hundred and at and had at the time of his death a fixed place of abode at within the district of (2) and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially (3) and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief. (4) And I further make oath (*or* solemnly, sincerely, and truly affirm and declare) that a part of the said personal estate and effects of the said deceased, under the value of pounds, is in England, and a further part thereof, amounting in value to the sum of and more particularly set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not at the time of his death possessed of or entitled to any personal estate and effects in Ireland to the best of knowledge, information, and belief. [*Or end thus:* That a further part thereof, amounting in value to the sum of is in Ireland to the best of knowledge, information, and belief.] (5).

Sworn at on the day of 18 . } (Signed) C.D.

Before me

[*person authorized to administer oaths under the Act*].

(1) Insert the names, residences and titles, or additions of the persons making the affidavit.

(2) Insert the place of death, or set forth the reason why the same cannot be furnished.

(3) If any leaseholds, insert clause No. 1, at page 696.

(4) If no leaseholds, insert clause No. 2, at page 696.

(5) If there is personal estate in Ireland, a further affidavit, in Form No. 27, is to be made by executors or administrators.

No. 27.—*Additional Affidavit and Schedule for the Commissioners of Inland Revenue when part of the Personal Estate consists of Property in Ireland.*

In her Majesty's Court of Probate.

The District Registry at .

I, A.B. of an executor [*or* A.B. of and C.D. of executors,] named in the last will and testament with codicils [*or* the party or parties applying for letters of administration with the will and codicils annexed, of the personal estate and effects] of E.F. (*the testator*,) late of who died on the day of 18 at [*or, in cases of Intestacy*, in order to the due administration of the personal estate and effects of G.H. (*the intestate*), late of who died on the day of 18

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at intestate], and had at the time of his death a fixed place of abode at within the district of make oath and say; [*or, in the case of Quakers or other affirmants*, do or doth solemnly, sincerely, and truly affirm and declare] that ha made diligent search and due inquiry after and in respect of the personal estate and effects of the said deceased in Ireland, in order to ascertain the full amount and value thereof; and that to the best of knowledge, information and belief, the whole of the personal estate and effects, rights and credits, of which the said deceased died possessed in Ireland, consisting of the property, moneys, securities, matters, and things specified in the account annexed to this affidavit (*or affirmation*), are under the value of pounds exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, and without deducting anything on account of the debts due and owing from the deceased.

(Signed) A. B.

Sworn at on the day of 18 .
Before me,
G. H.,
[*person authorized to administer oaths under the Act*].

An Account of the Estate and Effects of .

	Price of Stocks.	£ s. d.
Household goods, linen, wearing apparel, books, plate, jewels, &c.		
Property in the stocks or funds transferable at the bank		
Leasehold property.....		
Property in public companies		
Money out on mortgage and other securities.....		
Real estate devised to be sold, or value of legacies charged on real estate		
Stock in trade, farming stock, and implements of husbandry		
Other personal property not comprised under the foregoing heads		

Non-Contentious Business.

No. 28.—*Affidavit of Handwriting.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

I, C. D. of in the county of make oath [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that I knew and was well acquainted with A. B. late of in the county of deceased, who died on the day of at , and had at the time of his death a fixed place of abode at within the district of for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, bearing date beginning thus ending thus and being subscribed thus "A. B." [*or as the case may be*], I further make oath, that I verily and in my conscience believe the whole body, series, and contents of the said will, together with the names "A. B." subscribed thereto as aforesaid [*or as the case may be*], to be of the true and proper handwriting and subscription of the said "A. B." deceased.

(Signed) C. D.

Sworn at on the day of 18 .

Before me,

G. H.,

[*person authorized to admininister oaths under the Act*].

No. 29.—*Affidavit of Plight and Condition and Finding.*

In her Majesty's Court of Probate.

The District Registry at .

In the goods of A. B. deceased.

I, C. D. of in the county of make oath [*or* solemnly, sincerely, and truly affirm and declare, *according to the form of words prescribed by the statute applicable to the particular case*], that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of A. B., late of in the county of deceased who died on the day of at , and had at the time of his death a fixed place of abode at , within the district of , the said will bearing date the day of , and having viewed and perused the said will, and particularly observed [*here recite the various obliterations, interlineations, erasures, and alterations (if any), or describe the plight and condition of the will, or any other matters*

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requiring to be accounted for, and set forth the finding of the will in its present state, and, if possible, trace the will from the possession of the deceased in his lifetime up to the time of making the affidavit]; I the deponent lastly make oath that the same is now in all respects in the same state, plight, and condition as when found [*or as the case may be*] by me as aforesaid.

(Signed) C. D.

Sworn at on the day of 18 .
Before me,
G. H.,
[*person authorized to administer oaths under the Act*].

No. 30.—*Affidavit of Search.*

In her Majesty's Court of Probate.

The District Registry at .

I, C. D. of (1) in the county of , make oath [*or* solemnly, sincerely, and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case*], that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of A. B., late of deceased, who died on the day of in the year 18 , at , and had at the time of his death a fixed place of abode at , within the district of , the said will beginning thus, " ," ending thus, " In witness whereof, I have hereunto set my hand this day of in the year of our Lord one thousand eight hundred and fifty-four," [*or as the case may be*], and being thus subscribed, "A. B." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or* that the said will is without date, *or as the case may be*], I further make oath [*or* declare and affirm] that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [*or* declare and affirm], that I verily believe the said deceased died without having left any will, codicil, or testamentary paper whatever other than the said will by me herein-before deposed of.

(Signed) C. D.

Sworn at on the day of 18 .
Before me,
G. H.,
[*person authorized to administer oaths under the Act*].

(1) This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.

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No. 31.—*Caveat.*

In her Majesty's Court of Probate.

The District Registry at .

Let nothing be done in the goods of A. B., late of deceased, who died on the day of at , and had at the time of his death a fixed place of abode at , within the district of , unknown to C. D. of , having interest [*or* to E. F. of proctor, solicitor, *or* attorney of parties having interest].

Dated this day of 18 .

(Signed) C. D. of [*or* E. F. of the proctor, solicitor, *or* attorney of parties having interest].

FORMS OF JURAT.

If one deponent only—

Sworn at on the day of 18 ,
Before me,

If more than one deponent—

Sworn by the said and (*give the Christian and surnames of each Deponent*) at on the day of 18 ,
Before me,

If the deponent be a marks-man, or is blind or illiterate—

Sworn by the said at on the day of 18 , this affidavit having been first read over to him [*or* her], who seemed perfectly to understand the same, and made his [*or* her] mark thereto in my presence,
Before me,

If the deponent be unacquainted with the English language—

Sworn by the said at on the day of 18 , by interpretation into the language by C. D. of , who had previously sworn that he was well acquainted with both languages and faithfully to interpret.

(The interpreter should sign his name on the affidavit for the purpose of identification.)

N.B.—In all cases of affirmation the exact words prescribed by the statute applicable to the particular case must be used, and none other will be received.

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GENERAL DIRECTIONS

TO THE DISTRICT REGISTRAR OF HER MAJESTY'S COURT OF PROBATE.

THE DISTRICT REGISTRARS ARE—

1. To address their letters to the Registrar with whom they have previously communicated upon the particular matter, but the envelope is to be addressed to the Principal Registrars.

2. To date the notices of applications for grants.

3. To place the word "executor" or "residue" in the margin of each copy of a will transmitted to the Principal Registry opposite the words containing the appointment of, or bequest to, the person taking the representation.

4. To use the greatest diligence in rectifying and forwarding to the Principal Registry any Inland Revenue Office affidavit, copy of will, record of grant, or other document that may have been returned for correction or alteration.

The delays which have occurred in these matters, have not only caused inconvenience in the Principal Registry, but have been complained of at the Inland Revenue Office.

5. To use in all cases for the records of grants, weekly lists, &c., printed forms similar to those of which patterns were forwarded.

6. Not to receive affidavits which are defective in the particulars required by Rules 62 and 64.

7. To transmit with the copies of testamentary papers proved, copies of all affidavits registered with them, and to leave a blank space (say of not less than two lines) between the testamentary papers, and also between them and any affidavit registered with them.

8. Whenever a grant of probate or administration is made in pursuance of directions from the Principal Registry, to mark the name of the Registrar from whom such directions were received in the margin of the record of the grant.

Non-Contentious Business.

9. Whenever the record of a grant is returned from the Principal Registry for amendment after the grant itself has been delivered out to the parties (in case it can be done consistently with the documents in the Registry), to return the record amended as suggested after having marked in the margin where, and in what respect, the record, as amended, differs from the grant.

10. To set forth the residence and description of the deceased at the time of his death, and the place of his decease in the same manner in all the papers,—and especially in the oath, the affidavit for the Inland Revenue Office, and the grant.

Variations in this respect lead to considerable difficulties where local knowledge is deficient; but the oath should in all cases contain the fullest description, and the record should in this particular exactly correspond with the oath.

11. Where grants have been made and delivered out of the Registry, they should not be altered except by a special order of one of the Registrars of the Principal Registry, and notice of every such alteration when made should be sent to the Principal Registry.

12. In the weekly packets containing records of grants, copies of wills, and affidavits for the Inland Revenue Office, no other papers should be enclosed, and such packets should be marked on the outside with the words "weekly returns."

13. On transmitting a notice of application in respect of which, in the judgment of the District Registrar, any question arises, the attention of the Registrars of the Principal Registry should be specifically called to the point, and the District Registrar should wait for a specific direction thereon, and this although it be not alluded to in the certificate.

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MEMORANDA

FOR THE USE OF THE DISTRICT REGISTRARS.

1. As a general rule the District Registrars are to adopt the signature of a testator as his name, although it differ from the name as written in the heading of the will.

2. In case of a variance between the name of the testator in the heading of the will, and the name as signed at the foot or end of it, and in case the former is the more correct, the testator should be described by the name he signs, the word "otherwise" followed by the name given him in the will being added.

3. If the testator's name is wrongly spelt in the will, and he signs his will by his initials or by a mark, he should be described in the probate by his correct name, the word "otherwise" followed by the name written in the will being added.

4. If the testator is described in the will as "the elder," but does not so subscribe himself, such description is not to be inserted in the probate.

5. If the testator is described in the will as "the younger," but does not so describe himself, he should, notwithstanding, be described in the probate as "the younger," or "*heretofore* the younger," as the case may be.

6. The testator's last place of residence, as stated in the will or codicil, should form part of his description in the oath and in the grant, and any previous or subsequent residence may be added, provided that not more than three places of residence be inserted in the grant.

7. When there is but one executor or executrix named in the will, he or she should be described in the probate as "the sole executor" or "the sole executrix."

8. When there are more executors than one, if they are all females, they are to be described as "the executrixes." If they are all males, or partly males and partly females, they are to be described as "the executors." The expressions "joint executors" and "executor and executrix" should not be used.

9. If the name of an executor or executrix is mis-spelt in the will, the words "in the will written" should be added to his or her

Non-Contentious Business.

correct name, and if the two names be identical in sound, no proof of identity is required.

10. If an executor be wrongly described in the will as "the elder," or "the younger," or by a wrong Christian name, an affidavit is requisite in proof of the identity of the person intended to be named in the will with the executor applying for the grant, or to whom power to apply is to be reserved in the grant.

11. Whenever it appears from the contents of the will that an executor or executrix is related to the testator as father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, great uncle, great aunt, nephew, niece, great nephew, great niece, or as the son or daughter or connection of any relative or of any other person, he or she is to be so described in the probate.

12. Administrators are to be described as follows:—

A husband as "the lawful husband."

A wife as "the lawful widow and relict."

A father as "the natural and lawful father."

A mother as "the natural and lawful mother" and "next of kin."

A child as "the natural and lawful son" [or daughter] and "one of the next of kin" or "only next of kin."

A brother as "the natural and lawful brother."

A sister as "the natural and lawful sister."

If there be no parents living, the brother or sister are further to be described as "one of the next of kin," or the "only next of kin."

A nephew as "the lawful nephew," and "one of the" [or "only] next of kin."

A niece as "the lawful niece," and "one of the" [or "only] next of kin."

If a brother or sister should be living, and the nephew or niece being the child of the intestate's brother or sister who died in his lifetime takes the letters of administration, he or she is to be described as "one of the parties entitled in distribution."

Grandparents, grandchildren, cousins, &c. are to be described as "lawful."

Non-Contentious Business.

In place of Rule 79 of the Rules and Orders in non-contentious business, it is ordered that—

79. The Registrars are to take care that the copies of wills and affidavits to be annexed to the probates or letters of administration are fairly and properly written, and are to reject those which are otherwise; but it shall not be necessary that such copies be written in the engrossing hand heretofore in use.

In place of Rule 4 of the Rules, Orders, and Instructions for the Registrars of the Principal Registry in non-contentious business, it is ordered that—

4. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the Registrars must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution, were in fact complied with.

4*a*. The practice of registering affidavits shall be discontinued, and, in lieu thereof, a note signed by a Registrar shall be inserted on the engrossed copy will or codicil annexed to the probate or letters of administration, and registered, to the effect that affidavits of due execution, of domicil, or as the case may be, have been filed: Provided that in cases presenting difficulty the affidavits themselves may still be registered by direction of a Registrar.

Forms of Notes to be used in the Principal Registry when applicable.

Affidavits of due execution filed.
A.B.,
Registrar.

Affidavits of identity of will (*or* codicil *or* memorandum) filed.
A.B.,
Registrar.

Affidavits of domicil and law filed.
A.B.,
Registrar.

Non-Contentious Business.

In place of Rule 7 of the Rules, Orders, and Instructions for the District Registrars of her Majesty's Court of Probate, it is ordered that—

7. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the District Registrar must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution, were in fact complied with.

7*a*. The practice of registering affidavits shall be discontinued, and, in lieu thereof, a note signed by the District Registrar shall be inserted on the engrossed copy will or codicil annexed to the probate or letters of administration, and registered, to the effect that affidavits of due execution, of domicil, or as the case may be, have been filed: Provided, that in cases presenting difficulty the affidavits themselves may still be registered with the consent of a Registrar of the Principal Registry.

Forms of Notes to be used in the Principal Registries when applicable.

Affidavits of due execution filed.
C. D.,
District Registrar.

Affidavits of identity of will (*or* codicil *or* memorandum) filed.
C. D.,
District Registrar.

Affidavits of domicil and law filed.
C. D.,
District Registrar.

INTESTATES' WIDOWS AND CHILDREN.

RULES AND ORDERS AND TABLE OF FEES

Framed in pursuance of the provisions of the Act of 36 & 37 *Vict. c.* 52.

I, the Right Honourable Sir James Hannen, Knight, Judge of the Court of Probate, do hereby order and direct that the fees mentioned and set forth in the table of fees hereunto annexed, shall, on approval of the Commissioners of her Majesty's Treasury, be taken for and in respect of all grants of letters of administration made by the Court of Probate by authority of the Act of 36 & 37 Vict. c. 52.

And I further order and direct that a moiety of the said fees shall be paid to or retained by the Registrar of the County Court acting in the matter, and the remaining moiety shall be paid to or retained by the Registrars of the Principal Registry or the District Registrars of the Court of Probate, by whom the letters of administration are made out and sealed.

And I further order and direct that the moiety of the fees paid to or retained by the Registrars or District Registrars of the Court of Probate, shall be applied to the purchase of fee stamps denoting the amount, and such fee stamps shall be cancelled and deposited in or transmitted to the Principal Registry in the same manner as other fee stamps taken in the Principal and other Registries of the Court.

(Signed) JAMES HANNEN.

Dated this 8th day of August, 1873.

Non-Contentious Business.

TABLE OF FEES

TO BE TAKEN IN THE

PRINCIPAL REGISTRY AND DISTRICT REGISTRIES OF THE COURT OF PROBATE, AND BY THE REGISTRARS OF COUNTY COURTS,

In pursuance of the Act 36 & 37 *Vict. c.* 52.

Letters of administration of the personal estate of an intestate granted to his widow or one or more of his children, under the authority of the Act 36 & 37 Vict. c. 52, when the whole of such personal estate is sworn:—

	£	*s.*	*d.*
Not to exceed in value 20*l.*	0	5	0
Not to exceed in value 30*l.*	0	6	0
Not to exceed in value 40*l.*	0	7	0
Not to exceed in value 50*l.*	0	8	0
Not to exceed in value 60*l.*	0	9	0
Not to exceed in value 70*l.*	0	10	0
Not to exceed in value 80*l.*	0	11	0
Not to exceed in value 90*l.*	0	12	0
Not to exceed in value 100*l.*	0	13	0

The moiety of the above fees to be paid to or retained by the Acting County Court Registrar, and the remaining moiety to be deposited in or remitted to the Principal or District Registries of the Court in the form of fee stamps.

(Signed) JAMES HANNEN.

Dated this 8th day of August, 1873.

Approved by the Commissioners of
Her Majesty's Treasury,
13th August, 1873.

Non-Contentious Business.

FEES

TO BE TAKEN IN THE

PRINCIPAL REGISTRY OF THE COURT OF PROBATE

IN

NON-CONTENTIOUS BUSINESS.

Probates or Letters of Administration with Will annexed, including double or cessate Probates or Letters of Administration with Will annexed, de bonis non or cessate, upon which stamp duty is payable in respect of the value of the Personal Estate of the Testator.

If the personal estate is sworn to be under the value of—	£	s.	d.
£5	0	1	0
20	0	1	0
100	0	1	0
200	0	3	0
300	0	7	6
450	0	12	0
600	0	16	6
800	1	2	6
1,000	1	13	0
1,500	2	5	0
2,000	3	0	0
3,000	3	15	0
4,000	4	10	0
5,000	4	15	0
6,000	5	0	0
7,000	5	5	0
8,000	5	10	0
9,000	5	15	0
10,000	6	0	0
12,000	6	5	0
14,000	6	10	0
16,000	6	17	6
18,000	7	5	0
20,000	7	12	6
25,000	8	2	6

If the personal estate is sworn to be under the value of—	£	s.	d.
£30,000	8	15	0
35,000	9	7	6
40,000	10	6	3
45,000	11	5	6
50,000	12	3	9
60,000	13	2	6
70,000	15	0	0
80,000	16	17	6
90,000	18	15	0
100,000	20	12	6
120,000	21	11	3
140,000	23	8	9
160,000	25	6	3
180,000	27	3	9
200,000	29	1	3
250,000	30	18	9
300,000	35	12	6
350,000	40	6	3
400,000	41	17	6
500,000	43	8	9
For every additional £100,000 or any fractional part of £100,000 a further and additional fee of	3	2	6

Double or Cessate Probate, &c.

	£	s.	d.
For every double or cessate probate, or letters of administration with the will annexed, de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under 450*l.* or any smaller sum, the same fee as on a first grant under the same sum:—			
When the personal estate is of the value of 450*l.* and upwards	0	12	6

		£	s.	d.
Non-Contentious Business.	For every duplicate and triplicate probate, or letters of administration with the will annexed, when the personal estate is under 450*l.* or any smaller sum, the same fee as on a first grant under the same sum:—			
	When the personal estate is of the value of 450*l.* and upwards	0	12	6

Exemplifications.

For every exemplification of a probate, or letters of administration with the will annexed, in addition to the fees for engrossing and collating the will and other documents registered with the same	1	1	0

Registering and collating or engrossing and collating Wills.

For registering and collating or engrossing and collating wills and other documents, if three folios of ninety words each, or under, including parchment	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of grants for Queen's pay or prize money, the effects being under 100*l.*, without reference to the length of the will	0	4	6
If there are pencil marks in a will or codicil, or if a will or codicil or any part thereof is to be or has been registered fac simile, in addition to any other fee for registering and collating or for engrossing and collating the same:—			
If the part or parts to be registered or engrossed fac simile are two folios of ninety words in length, or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0	0	6

Codicils to Wills already Proved.

For every probate of a codicil or codicils, or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed.

Non-Contentious Business.

Letters of Administration,

including letters of administration de bonis non or cessate upon which stamp duty is payable in respect of the personal estate of an intestate.

If the personal estate is sworn to be under the value of—	£	s.	d.
£5	0	1	0
20	0	1	0
50	0	1	0
100	0	1	0
200	0	4	6
300	0	12	0
450	0	16	6
600	1	2	6
800	1	13	0
1,000	2	5	0
1,500	3	7	6
2,000	4	10	0
3,000	4	13	9
4,000	4	17	6
5,000	5	5	0
6,000	5	12	6
7,000	6	0	0
8,000	6	7	6
9,000	6	15	0
10,000	7	2	6
12,000	7	10	0
14,000	7	17	6
16,000	8	8	9
18,000	9	0	0
20,000	9	11	3
25,000	10	6	3

If the personal estate is sworn to be under the value of—	£	s.	d.
£30,000	11	5	0
35,000	12	3	9
40,000	13	11	3
45,000	15	0	0
50,000	16	7	6
60,000	17	16	3
70,000	20	12	6
80,000	23	8	9
90,000	26	5	0
100,000	29	1	3
120,000	30	9	6
140,000	33	5	9
160,000	36	2	0
180,000	38	18	3
200,000	41	14	6
250,000	44	10	9
300,000	46	17	6
350,000	49	4	6
400,000	51	11	3
500,000	53	18	3
For every additional £100,000 or any fractional part of £100,000 a further and additional fee of	4	13	6

Duplicate and Triplicate Letters of Administration, &c.

	£	s.	d.
For every duplicate and triplicate letters of administration when the personal estate is under 300*l.* or any sum less than 300*l.*, the same fee as on a first grant of letters of administration under the same sum.			
For every duplicate and triplicate letters of administration when the personal estate is of the value of 300*l.* and upwards	0	12	6

Exemplifications.

For every exemplification of letters of administration ...	1	1	0

Non-Contentious Business.

Administrations de bonis non or cessate.

	£	s.	d.
For every grant of letters of administration de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under 300*l.* or any smaller sum, the same fee as on a first grant under the same sum :—			
When the personal estate is of the value of 300*l.* and upwards	0	12	6

Additional Security.

For noting on the grant of letters of administration with or without will annexed, and on the Act, that additional security has been given	0	5	0
For every certificate for the Inland Revenue Office, that additional security has been given	0	1	0

Articles to pay Pro Ratâ.

For articles entered into by administrators to pay creditors pro ratâ, per folio of seventy-two words each	0	2	0
For the bond for the performance of the articles, or for payment of creditors pro ratâ, per folio of seventy-two words	0	2	0

Searches and Inspection of Wills, &c.

For every search for will or grant of letters of administration or any document filed in the Principal Registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an Administration Act	0	1	0
For every third will or Administration Act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered in addition to the fee for the search...	0	1	0
For looking up and producing any document filed in the Registry other than an original will or Administration Act	0	1	0
For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same :—			
For the search for each year or part of a year	0	0	6
For reading the will :—			
If twenty folios of ninety words each or under	0	1	0
For every additional twenty folios or part of twenty folios of ninety words each	0	1	0

Non-Contentious Business.

Searches for former Grants.

	£	s.	d.
For every search by an officer of the Principal Registry in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—			
For every full year or part of a year which has elapsed since the deceased's death	0	0	6
In case it be requisite to extend the search to one or more District Registries, a similar additional fee for the search in each of such District Registries.			

Special and Limited Grants.

For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:—

If the personal estate is under the value of 20*l.*, 1*s.* per folio of seventy-two words each on the bond on the Act, and on the grant of probate or letters of administration.

If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of seventy-two words each on the bond, on the Act, and on the grant of probate or letters of administration.

Whenever the personal estate to be placed in possession of, or dealt with by, the executor or administrator, by means of a special or limited grant of probate or letters of administration, exceeds in value the sum of 20*l.*, the fee of 2*s.* per folio of seventy-two words shall be payable on the bond, on the Act, and on the grant, although the personal estate be sworn under 20*l.*

Sealing Irish and Scotch Grants.

	£	s.	d.
For affixing the seal of the Court to any grant of probate or letters of administration, with or without will annexed, or to any exemplification of probate or letters of administration, with or without will annexed, under seal of the Court of Probate in Ireland, in order to its becoming in force for property in England,—such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be effected by the probate or other instrument to which the seal of the Court is to be affixed.			
For the Registrar's fiat on an Irish grant	0	5	0
For affixing the seal of the Court to any confirmation of an executor issued by authority of a Commissary Court in Scotland	1	1	0

Non-Contentious Business.

	£	s.	d.
Notation of Domicile.			
For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in England	0	5	0
Office Copies and Extracts.			
For every office copy or extract of a will, or of a probate, or Administration Act, or of any document filed or deposited in the Principal Registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, for every additional folio or part of a folio	0	0	6
If the will or other document is 20θ years old and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, for every additional folio or part of a folio	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is two folios of ninety words in length or under, in addition to the fee for the copy	0	1	0
If exceeding two folios of ninety words, for every additional folio or part of a folio	0	0	6
For copies of wills and other documents in foreign languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies.			
If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6*d.* per folio of ninety words, and collating):—			
For twenty folios of ninety words or under	0	10	0
For every additional folio or part of a folio	0	1	0
For office copy of a will, minute, order, decree, or any document under seal of the Court for which no other fee is payable:—			
For the seal, in addition to the fee for the copy and collating	0	5	0
For copies of plans, drawings, and armorial bearings, &c., such fee as shall be determined by the Registrar in each particular case.			
Collating Documents.			
For collating copy of a probate and will, or copy of letters of administration with or without the will annexed, or any other instrument to be filed or deposited in the Registry, or for collating any copy or instrument with an original document already filed or deposited in the Registry, including the Registrar's certificate in verification thereof:—			
If ten folios of ninety words each, or under	0	2	6
If above ten folios of ninety words each, per folio	0	0	3

	£	s.	d.	
If there is any pencil writing copied or the copy or any part thereof is fac simile, in addition to the above fees:—				Non-Contentious Business.
If such pencil writing or fac simile copy is two folios of ninety words in length or under	0	0	6	
For every additional folio or part of a folio	0	0	3	

Attendances.

For attendance with any book or original document in any of the Courts of law or equity in London or Westminster, or elsewhere within three miles of the Principal Registry	1	1	0
For the second and each subsequent attendance in the same term or sittings after term	0	10	6
For attendance with books or original documents in any of the Courts of law or equity in London or Westminster, or elsewhere within three miles of the Principal Registry, when more than one book or document are required for each book or document besides the first	0	5	0
For the second and each subsequent attendance in the same term or sittings after term, for each book or document besides the first	0	2	6
For each day's attendance with any book or original document in any of the Courts of law or equity, or elsewhere beyond the distance of three miles from the Principal Registry, exclusive of travelling expenses	1	1	0
For each day's attendance with books or original documents in any of the Courts of law or equity, or elsewhere beyond the distance of three miles from the Principal Registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first	0	5	0
The travelling expenses to be advanced and paid to the messenger attending with books, or original documents, shall include all other necessary expenses which are to be or may have been incurred by such messenger.			

Registrar's Order.

For every Registrar's order for revocation of a grant	0	5	0
For every other Registrar's order	0	2	6

Filing.

For filing every affidavit or other document in the Principal Registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6
For filing every exhibit	0	1	0

Non-Contentious Business.

	£	s.	d.
For filing in the Principal Registry any notice required to be sent there by a District Registrar	0	0	6
For filing in a District Registry any notice required to be sent there by a Registrar of the Principal Registry	0	0	6

Caveats.

For the entry of every caveat	0	1	0
For each notice of such caveat to the District Registrars.	0	1	0
For every warning to a caveat	0	2	6
For every service of a warning to caveat sent by a Registrar through the public post	0	2	6
For subducting a caveat	0	1	0
For notice to any District Registrar to whom notice of a caveat has been sent of its having been subducted or warned	0	1	0

Receipts for Papers.

For every receipt for documents left in the Principal Registry in order to obtain a grant of probate or letters of administration with or without will annexed, or any second or subsequent grant	0	1	0
For every receipt for a document or documents delivered out of the Principal Registry	0	1	0

Deposit of Wills.

For depositing every will of a person deceased in the Principal Registry for safe custody	0	10	0
For depositing every will of a living person for safe custody, including the deposit receipt	0	10	0

Taxing Costs.

For taxing every bill of costs, inclusive of the Registrar's certificate:—			
If five folios of seventy-two words, or under	0	5	0
If exceeding that length, for every additional folio	0	1	0
For postponement of appointment for taxation of costs, to be paid by the party at whose instance the appointment is postponed:—			
If the bill of costs is five folios of seventy-two words, or under	0	1	0
If exceeding five folios of seventy-two words, and under fifteen folios	0	2	6
If exceeding fifteen folios	0	5	0

Bonds.

For superintending and attesting the execution of a bond	0	1	6
If not completed on one occasion, for each subsequent attestation	0	1	0

Non-Contentious Business.

	£	s.	d.
Oaths.			
For every oath administered by the Registrars, or by a Commissioner authorised to administer oaths in the Principal Registry, to each deponent	0	1	0
For marking each exhibit	0	1	0
Settling Advertisements.			
For settling the abstract of citation for advertisement or other advertisement	0	2	6
Alterations in Grants.			
For making alterations in grants of probate or letters of administration in pursuance of the order of one of the Registrars	0	2	6
Notations.			
For noting alterations in and revocations of grants on the record of the same	0	2	6
For noting second and subsequent grants on the record of the first grant	0	2	6
For noting renunciations, or any other necessary matter on the record of a grant	0	2	6
Certificates.			
For every certificate under the hand of one or more of the Registrars of the Principal Registry for which no other fee is payable	0	2	6
Fiats.			
For the fiat of a Registrar as to the form in which any will or codicil is to be registered	0	5	0
For noting on a testamentary paper that probate thereof is refused	0	5	0
Notices.			
For every notice required to be sent to a District Registrar for which no other fee is payable, except notices required by Rule 72	0	1	0

Non-Contentious Business.

Perusing and Settling Oaths, &c.

	£	s.	d.
For perusing and settling oaths to lead special or limited grants of probate or letters of administration, with or without will, or other instruments :—			
If five folios of seventy-two words, or under	0	2	6
If above five folios, for each additional folio	0	0	3
For perusing deeds and other documents when necessary, per folio of seventy-two words	0	0	3

Commissioner.

For each appointment of a Commissioner to administer oaths in the Court of Probate, other than clerks and officers of the Court authorised to administer oaths in the principal or in a District Registry only	1	0	0
For registering the appointment of a Commissioner appointed to administer oaths in the Court of Chancery	0	5	0

Non-Contentious Business.

IN ADDITION TO THE ORDINARY FEES

TO BE TAKEN IN THE

PRINCIPAL REGISTRY OF THE COURT OF PROBATE

IN NON-CONTENTIOUS BUSINESS,

The following Fees are to be taken in

THE DEPARTMENT FOR PERSONAL APPLICATIONS.

On Probates or Letters of Administration with Will annexed, or Double or Cessate Probates or Letters of Administration with Will annexed de bonis non or cessate upon which Stamp Duty is payable in respect of the Personal Estate of the Testator.

Effects sworn under	Preparing Oath of Executors.			Preparing Affidavit for the Inland Revenue Office.			Probate under Seal.			Clerks.		
£	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
5	0	2	6	0	2	6	0	1	0	—		
20	0	2	6	0	2	6	0	1	0	0	1	0
100	0	5	0	0	5	0	0	1	0	0	2	0
200	0	5	0	0	5	0	0	2	0	0	2	0
300	0	5	0	0	5	0	0	5	0	0	2	0
450	0	5	0	0	5	0	0	8	0	0	2	0
600	0	5	0	0	5	0	0	11	0	0	2	0
800	0	5	0	0	5	0	0	15	0	0	2	0
1,000	0	5	0	0	5	0	1	2	0	0	2	0
1,500	0	5	0	0	5	0	1	10	0	0	5	0
2,000	0	5	0	0	5	0	2	0	0	0	5	0
3,000	0	5	0	0	5	0	2	10	0	0	5	0
4,000	0	5	0	0	5	0	3	0	0	0	5	0
5,000	0	5	0	0	5	0	3	2	6	0	7	6
6,000	0	5	0	0	5	0	3	5	0	0	7	6
7,000	0	5	0	0	5	0	3	7	6	0	7	6
8,000	0	5	0	0	5	0	3	10	0	0	7	6
9,000	0	5	0	0	5	0	3	12	6	0	7	6
10,000	0	5	0	0	5	0	3	15	0	0	7	6
12,000	0	5	0	0	5	0	3	17	6	0	7	6
14,000	0	5	0	0	5	0	4	0	0	0	7	6
16,000	0	5	0	0	5	0	4	3	9	0	7	6
18,000	0	5	0	0	5	0	4	7	6	0	7	6
20,000	0	5	0	0	5	0	4	11	3	0	7	6
25,000	0	5	0	0	5	0	4	16	3	0	7	6
30,000	0	5	0	0	5	0	5	2	6	0	7	6
35,000	0	5	0	0	5	0	5	8	9	0	7	6
40,000	0	5	0	0	5	0	5	18	3	0	7	6
45,000	0	5	0	0	5	0	6	7	6	0	7	6

Non-Contentious Business.

Effects sworn under	Preparing Oath of Executors.			Preparing Affidavit for the Inland Revenue Office.			Probate under Seal.			Clerks.		
£	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
50,000	0	5	0	0	5	0	6	17	0	0	7	6
60,000	0	5	0	0	5	0	7	6	3	0	7	6
70,000	0	5	0	0	5	0	8	5	0	0	7	6
80,000	0	5	0	0	5	0	9	3	9	1	1	0
90,000	0	5	0	0	5	0	10	2	6	1	1	0
100,000	0	5	0	0	5	0	11	1	3	1	1	0
120,000	0	5	0	0	5	0	11	10	9	1	1	0
140,000	0	5	0	0	5	0	12	9	6	1	1	0
160,000	0	5	0	0	5	0	13	8	3	1	1	0
180,000	0	5	0	0	5	0	14	7	0	1	1	0
200,000	0	5	0	0	5	0	15	5	9	1	1	0
250,000	0	5	0	0	5	0	16	4	6	1	1	0
300,000	0	5	0	0	5	0	18	11	3	1	1	0
350,000	0	5	0	0	5	0	20	18	3	1	1	0
400,000	0	5	0	0	5	0	21	13	9	1	1	0
500,000	0	5	0	0	5	0	22	9	6	1	1	0

For every additional 100,000*l.*, or any fractional part of 100,000*l.* under which the effects are sworn, in addition to the above fees, 1*l.* 11*s.* 3*d.*

In addition to the above, for all second and subsequent grants the same fees for looking up and taking an account of each former representation as on similar grants on which no stamp duty is payable.

	£	s.	d.
For engrossing and collating the will, if three folios of ninety words or under, including parchment ...	0	4	6
If exceeding three folios, per folio	0	1	6

For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed when there are pencil marks in the will or codicil or when the will or codicil is to be registered fac simile in addition to any other fee for engrossing and collating the same:—

	£	s.	d.
If the pencil marks in the will or codicil, or the part or parts thereof to be registered fac simile, are two folios of ninety words in length or under	0	1	0
If exceeding two folios for every additional folio or part of the folio of ninety words	0	0	6

Fees on Letters of Administration with Will annexed.

In addition to the above fees;

For preparing the bond—if the effects are

	£	s.	d.
Under 20*l.*	0	1	6
20*l.* and under 100*l.*	0	3	6
100*l.* and upwards	0	5	0

Non-Contentious Business.

On Letters of Administration granted to a Widow of an Intestate or to his Children when the Personal Estate is sworn:

	£	s.	d.
Not to exceed in value 20*l.*	0	2	6
Not to exceed in value 30*l.*	0	3	6
Not to exceed in value 40*l.*	0	4	6
Not to exceed in value 50*l.*	0	5	6
Not to exceed in value 60*l.*	0	6	6
Not to exceed in value 70*l.*	0	7	6
Not to exceed in value 80*l.*	0	8	6
Not to exceed in value 90*l.*	0	9	6
Not to exceed in value 100*l.*	0	10	6

The above include all fees payable in respect of such grants, for preparing oath of administrator and bond, preparing affidavit for the Inland Revenue, for letters of administration under seal, for clerks, also for administering oath or affirmation to the administrator, attesting execution of bond and instructions for and drawing and copying an instrument of renunciation to be executed by the widow if required.

On other Grants of Letters of Administration including Letters of Administration de bonis non or cessate, upon which Stamp Duty is payable in respect of the Personal Estate of the Intestate.

Effects sworn not to exceed	Preparing Oath of Administrator and Bond.			Preparing Affidavit for the Inland Revenue.			Letters of Administration under Seal.			Clerks.		
£	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
5	0	4	0	0	2	6	0	1	0		—	
20	0	4	0	0	2	6	0	1	0	0	1	0
50	0	7	6	0	3	0	0	1	0	0	2	0
100	0	8	6	0	5	0	0	1	0	0	2	0
Effects sworn under												
200	0	10	0	0	5	0	0	3	0	0	2	0
300	0	10	0	0	5	0	0	8	0	0	2	0
450	0	10	0	0	5	0	0	11	0	0	2	0
600	0	10	0	0	5	0	0	15	0	0	2	0
800	0	10	0	0	5	0	1	2	0	0	2	0
1,000	0	10	0	0	5	0	1	10	0	0	5	0
1,500	0	10	0	0	5	0	2	5	0	0	5	0
2,000	0	10	0	0	5	0	3	0	0	0	5	0
3,000	0	10	0	0	5	0	3	1	9	0	7	6
4,000	0	10	0	0	5	0	3	3	9	0	7	6
5,000	0	10	0	0	5	0	3	7	6	0	7	6
6,000	0	10	0	0	5	0	3	11	3	0	7	6
7,000	0	10	0	0	5	0	3	15	0	0	7	6

Non-Contentious Business.

Effects sworn not to exceed	Preparing Oath of Administrator and Bond.	Preparing Affidavit for the Inland Revenue.	Letters of Administration under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
8,000	0 10 0	0 5 0	3 18 9	0 7 6
9,000	0 10 0	0 5 0	4 2 6	0 7 6
10,000	0 10 0	0 5 0	4 6 3	0 7 6
12,000	0 10 0	0 5 0	4 10 0	0 7 6
14,000	0 10 0	0 5 0	4 13 9	0 7 6
16,000	0 10 0	0 5 0	4 19 6	0 7 6
18,000	0 10 0	0 5 0	5 5 0	0 7 6
20,000	0 10 0	0 5 0	5 10 9	0 7 6
25,000	0 10 0	0 5 0	5 18 3	0 7 6
30,000	0 10 0	0 5 0	6 7 6	0 7 6
35,000	0 10 0	0 5 0	6 17 0	0 7 6
40,000	0 10 0	0 5 0	7 10 9	0 7 6
45,000	0 10 0	0 5 0	8 5 0	0 7 6
50,000	0 10 0	0 5 0	8 18 9	0 7 6
60,000	0 10 0	0 5 0	9 13 3	0 7 6
70,000	0 10 0	0 5 0	11 1 3	0 7 6
80,000	0 10 0	0 5 0	12 9 6	1 1 0
90,000	0 10 0	0 5 0	13 17 6	1 1 0
100,000	0 10 0	0 5 0	15 5 9	1 1 0
120,000	0 10 0	0 5 0	15 19 9	1 1 0
140,000	0 10 0	0 5 0	17 8 0	1 1 0
160,000	0 10 0	0 5 0	18 16 3	1 1 0
180,000	0 10 0	0 5 0	20 4 0	1 1 0
200,000	0 10 0	0 5 0	21 12 6	1 1 0
250,000	0 10 0	0 5 0	23 0 3	1 1 0
300,000	0 10 0	0 5 0	24 3 9	1 1 0
350,000	0 10 0	0 5 0	25 7 3	1 1 0
400,000	0 10 0	0 5 0	26 10 6	1 1 0
500,000	0 10 0	0 5 0	27 14 0	1 1 0
600,000	0 10 0	0 5 0	30 10 0	1 1 0
700,000	0 10 0	0 5 0	32 7 9	1 1 0
800,000	0 10 0	0 5 0	34 13 9	1 1 0
900,000	0 10 0	0 5 0	37 1 6	1 1 0
1,000,000	0 10 0	0 5 0	39 8 6	1 1 0

For every additional 100,000*l.*, or any fractional part of 100,000*l.*, under which the effects are sworn, in addition to the above fees, 2*l.* 7*s.*

In addition to the above for all second and subsequent grants the same fees for looking-up and taking an account of each former representation as on similar grants on which no stamp duty is payable.

Non-Contentious Business.

On Double or Cessate Probates on which no Stamp Duty is payable.

If the Effects are sworn under	Looking up and taking an Account of each former Grant.	Oath of the Executor.	Affidavit for Inland Revenue Office.	Double or Cessate Probate under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 2 6	0 2 6	0 1 0	0 1 0
100	0 5 0	0 5 0	0 5 0	0 1 0	0 2 0
200	0 5 0	0 6 6	0 5 0	0 3 0	0 2 0
300	0 5 0	0 6 6	0 5 0	0 7 6	0 2 0
450	0 5 0	0 6 6	0 5 0	0 12 0	0 2 0
600	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
800	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
1,000	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
1,500	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
2,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
3,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
4,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
5,000	0 5 0	0 6 6	0 5 0	0 12 6	0 7 6
Above 5,000	The fees to be taken are the same as above, except the fee for clerks, which, if the effects are of the value of 70,000*l.* or upwards, is 1*l.* 1*s.*				

On Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Looking up the grant of probate and original will, or grant of administration	0	5	0
Exemplification under seal, in addition to the 3*l.* stamp..	0	15	0
Clerks	0	2	6

On Duplicate and Triplicate Probates or Letters of Administration (with or without Will annexed), &c.

Looking up the will	0	5	0
Duplicate or triplicate probate or letters of administration, with or without the will annexed, or probate of codicil to will already proved, or letters of administration (with same annexed), if the personal estate is sworn under 450*l.*, or any smaller sum, the same fees as on the original grant.			
If the personal estate is of the value of 450*l.* and upwards	0	12	6
Clerks	0	2	6

Non-Contentious Business.

On Letters of Administration with or without Will annexed de bonis non or cessate on which no Stamp Duty is payable.

If the Effects are sworn under	Looking up and taking an Account of each former Grant.	Oath of the Administrator and Bond.	Affidavit for Inland Revenue Office.	De Bonis or Cessate Administration under Seal and Duty-paid Stamp.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 4 0	0 2 6	0 1 0	0 1 0
50	0 3 6	0 6 0	0 3 0	0 1 6	0 2 0
100	0 5 0	0 7 6	0 5 0	0 3 0	0 2 0
200	0 5 0	0 10 0	0 5 0	0 4 6	0 2 0
300	0 5 0	0 10 0	0 5 0	0 12 0	0 2 0
450	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0
600	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0

If the effects are 600*l.* and upwards, the same fees as above, except the fee for clerks, which is 5*s.*

	£	s.	d.
Instructions, Drawing, Copying, &c.			
Instructions for every oath, affidavit, instrument, or document, other than the oaths and affidavits and instruments of renunciation included in the foregoing fees	0	5	0
Drawing same, at per folio of 72 words	0	1	0
Copies of any documents prepared in the department for personal applications, not included in the foregoing fees, at per folio of 72 words	0	0	6
Instructions for special or limited probates, or letters of administration (*with or without will annexed*)	0	5	0
Attendances on settling oaths for special or limited grants	0	10	0
All other fees to be taken the same as for ordinary grants.			
Perusing, &c.			
Perusing and settling oaths, affidavits, and other instruments and documents not drawn in the department for personal applications, if 6 folios of 72 words or under	0	1	6
If exceeding 6 folios, at per folio of 72 words	0	0	3
Perusing and abstracting deeds, or other instruments when necessary, at per folio of 72 words	0	0	3
Oaths, &c.			
Administering oaths, or taking affirmations, other than those included in the foregoing fees, each deponent	0	1	0
Marking each exhibit	0	1	0
Bonds.			
Attesting execution of bond other than the bond of a widow or children of an intestate included in former fees	0	1	6
If not completed on one occasion, for each subsequent attestation	0	1	0
On giving additional security in addition to the above fees and the fees for preparing new bond:—			
For looking up original or any former bond	0	5	0

Non-Contentious Business.

FEES

TO BE TAKEN IN THE

DISTRICT REGISTRIES OF THE COURT OF PROBATE.

Probates or Letters of Administration with Will annexed, including Double or Cessate Probates or Letters of Administration with Will annexed de bonis non or cessate upon which stamp duty is payable in respect of the value of the personal estate of the testator.

If the personal estate is sworn to be— Under the value of	£	s.	d.
£5	0	1	0
20	0	1	0
100	0	1	0
200	0	3	0
300	0	7	6
450	0	12	0
600	0	16	6
800	1	2	6
1,000	1	13	0
1,500	2	5	0
2,000	3	0	0
3,000	3	15	0
4,000	4	10	0
5,000	4	15	0
6,000	5	0	0
7,000	5	5	0
8,000	5	10	0
9,000	5	15	0
10,000	6	0	0
12,000	6	5	0
14,000	6	10	0
16,000	6	17	6
18,000	7	5	0
20,000	7	12	6
25,000	8	2	6
30,000	8	15	0

If the personal estate is sworn to be— Under the value of	£	s.	d.
£35,000	9	7	6
40,000	10	6	3
45,000	11	5	0
50,000	12	3	9
60,000	13	2	6
70,000	15	0	0
80,000	16	17	6
90,000	18	15	0
100,000	20	12	6
120,000	21	11	3
140,000	23	8	9
160,000	25	6	3
180,000	27	3	9
200,000	29	1	3
250,000	30	18	9
300,000	35	12	6
350,000	40	6	3
400,000	41	17	6
500,000	43	8	9
For every additional 100,000*l.* or any fractional part of 100,000*l.* a further and additional fee of	3	2	6

Double or Cessate Probate, &c.

	£	s.	d.
For every double or cessate probate, or letters of administration with the will annexed, de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under 450*l.* or any smaller sum, the same fee as on a first grant under the same sum. When the personal estate is of the value of 450*l.* and upwards	0	12	6

Non-Contentious Business.

	£	s.	d.
For every duplicate and triplicate probate, or letters of administration with the will annexed, when the personal estate is under 450*l.* or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of 450*l.* and upwards	0	12	6

Exemplifications.

For every exemplification of a probate, or letters of administration with the will annexed, in addition to the fees for engrossing and collating the will and other documents registered with the same	1	1	0

Registering and collating or engrossing and collating Wills.

For registering and collating or engrossing and collating wills and other documents, if three folios of ninety words each, or under, including parchment	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of grants for Queen's pay or prize money, the effects being under 100*l.*, without reference to the length of the will	0	4	6
If there are pencil marks in a will or codicil, or if a will or codicil, or any part thereof is to be or has been registered fac simile, in addition to any other fee for registering and collating or for engrossing and collating the same:			
If the part or parts to be registered or engrossed fac simile are two folios of ninety words in length, or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0	0	6

Codicils to Wills already proved.

For every probate of a codicil or codicils or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed.

Letters of Administration,

including Letters of Administration de bonis non or cessate upon which Stamp Duty is payable in respect of the Personal Estate of an Intestate.

If the personal estate is sworn to be— Under the value of	£	s.	d.
£5	0	1	0
20	0	1	0
50	0	1	0
100	0	1	0
200	0	4	6
300	0	12	0
450	0	16	6
600	1	2	6
800	1	13	0
1,000	2	5	0
1,500	3	7	6
2,000	4	10	0
3,000	4	13	9
4,000	4	17	6
5,000	5	5	0
6,000	5	12	6
7,000	6	0	0
8,000	6	7	6
9,000	6	15	0
10,000	7	2	6
12,000	7	10	0
14,000	7	17	6
16,000	8	8	9
18,000	9	0	0
20,000	9	11	3
25,000	10	6	3
30,000	11	5	0

If the personal estate is sworn to be— Under the value of	£	s.	d.
£35,000	12	3	9
40,000	13	11	3
45,000	15	0	0
50,000	16	7	6
60,000	17	16	3
70,000	20	12	6
80,000	23	8	9
90,000	26	5	0
100,000	29	1	3
120,000	30	9	6
140,000	33	5	9
160,000	36	2	0
180,000	38	18	3
200,000	41	14	6
250,000	44	10	9
300,000	46	17	6
350,000	49	4	6
400,000	51	11	3
500,000	53	18	3
For every additional 100,000*l.* or any fractional part of 100,000*l.* a further and additional fee of	4	13	6

Duplicate and Triplicate Letters of Administration, &c.

	£	s.	d.
For every duplicate and triplicate letters of administration when the personal estate is under 300*l.* or any sum less than 300*l.*, the same fee as on a first grant of letters of administration under the same sum.			
For every duplicate and triplicate letters of administration when the personal estate is of the value of 300*l.* and upwards	0	12	6

Exemplifications.

	£	s.	d.
For every exemplification of letters of administration	1	1	0

Administrations de bonis non or cessate.

	£	s.	d.
For every grant of letters of administration de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under 300*l.* or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of 300*l.* and upwards	0	12	6

Non-Contentious Business.

Additional Security.

	£	s.	d.
For noting on the grant of letters of administration with or without will annexed, and on the Act, that additional security has been given	0	5	0
For every certificate for the Inland Revenue Office, that additional security has been given	0	1	0

Articles to pay pro Ratâ.

For articles entered into by administrators to pay creditors pro ratâ, per folio of seventy-two words each	0	2	0
For the bond for the performance of the articles, or for payment of creditors pro ratâ, per folio of seventy-two words	0	2	0

Searches and Inspection of Will, &c.

For every search for will or grant of letters of administration or any document filed in a District Registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration Act	0	1	0
For every third will or administration Act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered in addition to the fee for the search.	0	1	0
For looking up and producing any document filed in a District Registry other than an original will or administration Act	0	1	0
For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same:—			
For the search for each year or part of a year	0	0	6
For reading the will:—			
If twenty folios of ninety words each or under	0	1	0
For every additional twenty folios or part of twenty folios of ninety words each	0	1	0

Searches for former Grants.

For every search by an officer of the Principal Registry or by an officer of a District Registry, in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—			
For every full year or part of a year which has elapsed since the deceased's death	0	0	6
In case it be requisite to extend the search to one or more other District Registries, a similar additional fee for the search in each of such registries.			

Non-Contentious Business.

Special and Limited Grants.

	£	s.	d.
For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:—			
If the personal estate is under the value of 20*l.*, 1*s.* per folio of seventy-two words each on the bond, on the Act, and on the grant of probate or letters of administration.			
If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of seventy-two words each on the bond, on the Act, and on the grant of probate or letters of administration.			
Whenever the personal estate to be placed in possession of, or dealt with by, the executor or administrator, by means of a special or limited grant of probate or letters of administration, exceeds in value the sum of 20*l.*, the fee of 2*s.* per folio of seventy-two words shall be payable on the bond, on the Act, and on the grant, although the personal estate be sworn under 20*l.*			

Notation of Domicile.

For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in England	0	5	0

Office Copies and Extracts.

For every office copy or extract of a will, or probate, or administration Act, or of any document filed or deposited in a District Registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, for every additional folio or part of a folio	0	0	6
If the will or other document is 200 years old and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, for every additional folio or part of a folio	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is two folios of ninety words in length or under, in addition to the fee for the copy	0	1	0
If exceeding two folios of ninety words, for every additional folio or part of a folio	0	0	6
For copies of wills and other documents in foreign languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies.			

Non-Contentious Business.

	£	s.	d.
If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6*d.* per folio of ninety words and collating):—			
If twenty folios of ninety words or under	0	10	0
For every additional folio or part of a folio	0	1	0
For office copy of a will, minute, order, decree, or any document under seal of the Court for which no other fee is payable:—			
For the seal in addition to the fee for the copy and collating	0	5	0
For copies of plans, drawings, and armorial bearings, &c., such fee as shall be determined by the District Registrar in each particular case.			
Collating Documents.			
For collating copy of a probate and will, or copy of letters of administration with or without the will annexed, or any other instrument to be filed or deposited in a District Registry, or for collating any copy or instrument with an original document already filed or deposited in a District Registry, including the District Registrar's certificate in verification thereof.			
If ten folios of ninety words each, or under	0	2	6
If above ten folios of ninety words each, per folio	0	0	3
If there is any pencil writing copied or the copy or any part thereof is fac simile in addition to the above fees:			
If such pencil writing or fac simile copy is two folios of ninety words in length or under	0	0	6
For every additional folio or part of a folio	0	0	3
Attendances.			
For attendance with any book or original document within three miles of the District Registry	1	1	0
For the second and each subsequent attendance at the same place within fourteen days	0	10	6
For attendance with books or original documents within three miles of the District Registry, when more than one book or document are required, for each book or document besides the first	0	5	0
For the second and each subsequent attendance at the same place within fourteen days, for each book or document besides the first	0	2	6
For each day's attendance with any book or original document beyond the distance of three miles from the District Registry, exclusive of travelling expenses	1	1	0
For each day's attendance with books or original documents beyond the distance of three miles from the District Registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first	0	5	0
The travelling expenses to be advanced and paid to the messenger attending with books or original documents shall include all other necessary expenses which are to be or may have been incurred by such messenger.			

Non-Contentious Business.

	£	s.	d.
District Registrar's Minute.			
For every District Registrar's minute	0	2	6
Filing.			
For filing every affidavit or other document brought into and deposited in a District Registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6
For filing every exhibit	0	1	0
For filing in a District Registry any notice required to be sent there from the Principal Registry	0	0	6
For filing in the Principal Registry any notice required to be sent there by a District Registrar	0	0	6
Caveats.			
For the entry of every caveat	0	1	0
For each notice of such caveat to the principal or to any District Registry	0	1	0
For subducting a caveat	0	1	0
For notice to the Principal Registry or to any District Registry to which notice of a caveat has been sent of its having been subducted	0	1	0
Receipts for Papers.			
For every receipt for documents left in a District Registry	0	1	0
For every receipt for a document or documents delivered out of a District Registry	0	1	0
Deposit of Wills.			
For depositing every will of a person deceased in a District Registry for safe custody	0	10	0
Bonds.			
For superintending and attesting the execution of a bond	0	1	6
If not completed on one occasion, for each subsequent attestation	0	1	0
Oaths.			
For every oath administered by a District Registrar or by a Commissioner authorized to administer oaths in the District Registry to each deponent	0	1	0
For marking each exhibit	0	1	0

Non-Contentious Business.

Alterations in Grants.

	£	*s.*	*d.*
For making alterations in grants of probate or letters of administration in pursuance of an order of one of the Registrars of the Principal Registry	0	2	6

Notations.

For noting alterations in and revocations of grants on the record of the same	0	2	6
For noting second and subsequent grants on the record of the first grant	0	2	6
For noting renunciations, or any other necessary matter on the record of a grant	0	2	6

Certificates.

For every certificate under the hand of a District Registrar for which no other fee is payable	0	2	6

Fiats.

For the fiat of a District Registrar as to the form in which any will or codicil is to be registered	0	5	0
For noting on a testamentary paper that probate thereof is refused	0	5	0

Notices.

For every notice required to be sent to the Principal Registry for which no other fee is payable, except notices required by Rule 82	0	1	0

Perusal of Deeds, &c.

For Perusing deeds or other documents when necessary, for every folio or part of a folio of seventy-two words..	0	0	3

Non-Contentious Business.

IN ADDITION TO THE ORDINARY FEES

TO BE TAKEN IN THE

DISTRICT REGISTRIES ATTACHED TO THE COURT OF PROBATE

IN NON-CONTENTIOUS BUSINESS,

The following Fees are to be taken in

CASES OF PERSONAL APPLICATIONS.

On Probates or Letters of Administration with Will annexed, or Double or Cessate Probates or Letters of Administration with Will annexed de bonis non or cessate upon which Stamp Duty is payable in respect of the Personal Estate of the Testator.

Effects sworn under	Preparing Oath of Executors.			Preparing Affidavit for the Inland Revenue Office.			Probate under Seal.			Clerks.		
£	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
5	0	2	6	0	2	6	0	1	0		—	
20	0	2	6	0	2	6	0	1	0	0	1	0
100	0	5	0	0	5	0	0	1	0	0	2	0
200	0	5	0	0	5	0	0	2	0	0	2	0
300	0	5	0	0	5	0	0	5	0	0	2	0
450	0	5	0	0	5	0	0	8	0	0	2	0
600	0	5	0	0	5	0	0	11	0	0	2	0
800	0	5	0	0	5	0	0	15	0	0	2	0
1,000	0	5	0	0	5	0	1	2	0	0	2	0
1,500	0	5	0	0	5	0	1	10	0	0	5	0
2,000	0	5	0	0	5	0	2	0	0	0	5	0
3,000	0	5	0	0	5	0	2	10	0	0	5	0
4,000	0	5	0	0	5	0	3	0	0	0	5	0
5,000	0	5	0	0	5	0	3	2	6	0	7	6
6,000	0	5	0	0	5	0	3	5	0	0	7	6
7,000	0	5	0	0	5	0	3	7	6	0	7	6
8,000	0	5	0	0	5	0	3	10	0	0	7	6
9,000	0	5	0	0	5	0	3	12	6	0	7	6
10,000	0	5	0	0	5	0	3	15	0	0	7	6
12,000	0	5	0	0	5	0	3	17	6	0	7	6
14,000	0	5	0	0	5	0	4	0	0	0	7	6
16,000	0	5	0	0	5	0	4	3	9	0	7	6
18,000	0	5	0	0	5	0	4	7	6	0	7	6
20,000	0	5	0	0	5	0	4	11	3	0	7	6
25,000	0	5	0	0	5	0	4	16	3	0	7	6
30,000	0	5	0	0	5	0	5	2	6	0	7	6
35,000	0	5	0	0	5	0	5	8	9	0	7	6
40,000	0	5	0	0	5	0	5	18	3	0	7	6
45,000	0	5	0	0	5	0	6	7	6	0	7	6
50,000	0	5	0	0	5	0	6	17	0	0	7	6

Non-Contentious Business.

Effects sworn under	Preparing Oath of Executors.	Preparing Affidavit for the Inland Revenue Office.	Probate under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
60,000	0 5 0	0 5 0	7 6 3	0 7 6
70,000	0 5 0	0 5 0	8 5 0	0 7 6
80,000	0 5 0	0 5 0	9 3 9	1 1 0
90,000	0 5 0	0 5 0	10 2 6	1 1 0
100,000	0 5 0	0 5 0	11 1 3	1 1 0
120,000	0 5 0	0 5 0	11 10 9	1 1 0
140,000	0 5 0	0 5 0	12 9 6	1 1 0
160,000	0 5 0	0 5 0	13 8 3	1 1 0
180,000	0 5 0	0 5 0	14 7 0	1 1 0
200,000	0 5 0	0 5 0	15 5 9	1 1 0
250,000	0 5 0	0 5 0	16 4 6	1 1 0
300,000	0 5 0	0 5 0	18 11 3	1 1 0
350,000	0 5 0	0 5 0	20 18 3	1 1 0
400,000	0 5 0	0 5 0	21 13 9	1 1 0
500,000	0 5 0	0 5 0	22 9 6	1 1 0

For every additional 100,000*l.*, or any fractional part of 100,000*l.* under which the effects are sworn, in addition to the above fees, 1*l.* 11*s.* 3*d.*

In addition to the above, for all second and subsequent grants the same fees for looking up and taking an account of each former representation as on similar grants on which no stamp duty is payable.

	£	s.	d.
For engrossing and collating the will, if three folios of ninety words or under, including parchment	0	4	6
If exceeding three folios, per folio	0	1	6

For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed when there are pencil marks in the will or codicil or when the will or codicil is to be registered fac simile in addition to any other fee for engrossing and collating the same:—

	£	s.	d.
If the pencil marks in the will or codicil, or the part or parts thereof to be registered fac simile, are two folios of 90 words in length or under	0	1	0
If exceeding two folios for every additional folio or part of the folio of 90 words	0	0	6

Fees on Letters of Administration with Will annexed.

In addition to the above fees:

For preparing the bond—if the effects are

	£	s.	d.
Under £20	0	1	6
£20 and under £100	0	3	6
£100 and upwards	0	5	0

Non-Contentious Business.

On Letters of Administration granted to a Widow of an Intestate or to his Children when the Personal Estate is sworn:

	£	s.	d.
Not to exceed in value 20*l.*	0	2	6
Not to exceed in value 30*l.*	0	3	6
Not to exceed in value 40*l.*	0	4	6
Not to exceed in value 50*l.*	0	5	6
Not to exceed in value 60*l.*	0	6	6
Not to exceed in value 70*l.*	0	7	6
Not to exceed in value 80*l.*	0	8	6
Not to exceed in value 90*l.*	0	9	6
Not to exceed in value 100*l.*	0	10	6

The above include all fees payable in respect of such grants, for preparing oath of administrator and bond, preparing affidavit for the Inland Revenue, for letters of administration under seal, for clerks, also for administering oath or affirmation to the administrator, attesting execution of bond and instructions for and drawing and copying an instrument of renunciation to be executed by the widow if required.

On other Grants of Letters of Administration including Letters of Administration de bonis non or cessate, upon which Stamp Duty is payable in respect of the Personal Estate of the Intestate.

Effects sworn not to exceed	Preparing Oath for Administrator and Bond.			Preparing Affidavit for the Inland Revenue.			Letters of Administration under Seal.			Clerks.		
£	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
5	0	4	0	0	2	6	0	1	0	—		
20	0	4	0	0	2	6	0	1	0	0	1	0
50	0	7	6	0	3	0	0	1	0	0	2	0
100	0	8	6	0	5	0	0	1	0	0	2	0
Effects sworn under												
200	0	10	0	0	5	0	0	3	0	0	2	0
300	0	10	0	0	5	0	0	8	0	0	2	0
450	0	10	0	0	5	0	0	11	0	0	2	0
600	0	10	0	0	5	0	0	15	0	0	2	0
800	0	10	0	0	5	0	1	2	0	0	2	0
1,000	0	10	0	0	5	0	1	10	0	0	5	0
1,500	0	10	0	0	5	0	2	5	0	0	5	0
2,000	0	10	0	0	5	0	3	0	0	0	5	0
3,000	0	10	0	0	5	0	3	1	9	0	7	6
4,000	0	10	0	0	5	0	3	3	9	0	7	6
5,000	0	10	0	0	5	0	3	7	6	0	7	6
6,000	0	10	0	0	5	0	3	11	3	0	7	6

Non-Contentious Business.

Effects sworn not to exceed	Preparing Oath for Administrator and Bond.	Preparing Affidavit for the Inland Revenue.	Letters of Administration under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
7,000	0 10 0	0 5 0	3 15 0	0 7 6
8,000	0 10 0	0 5 0	3 18 9	0 7 6
9,000	0 10 0	0 5 0	4 2 6	0 7 6
10,000	0 10 0	0 5 0	4 6 3	0 7 6
12,000	0 10 0	0 5 0	4 10 0	0 7 6
14,000	0 10 0	0 5 0	4 13 9	0 7 6
16,000	0 10 0	0 5 0	4 19 6	0 7 6
18,000	0 10 0	0 5 0	5 5 0	0 7 6
20,000	0 10 0	0 5 0	5 10 9	0 7 6
25,000	0 10 0	0 5 0	5 18 3	0 7 6
30,000	0 10 0	0 5 0	6 7 6	0 7 6
35,000	0 10 0	0 5 0	6 17 0	0 7 6
40,000	0 10 0	0 5 0	7 10 9	0 7 6
45,000	0 10 0	0 5 0	8 5 0	0 7 6
50,000	0 10 0	0 5 0	8 18 9	0 7 6
60,000	0 10 0	0 5 0	9 13 3	0 7 6
70,000	0 10 0	0 5 0	11 1 3	0 7 6
80,000	0 10 0	0 5 0	12 9 6	1 1 0
90,000	0 10 0	0 5 0	13 17 6	1 1 0
100,000	0 10 0	0 5 0	15 5 9	1 1 0
120,000	0 10 0	0 5 0	15 19 9	1 1 0
140,000	0 10 0	0 5 0	17 8 0	1 1 0
160,000	0 10 0	0 5 0	18 16 3	1 1 0
180,000	0 10 0	0 5 0	20 4 0	1 1 0
200,000	0 10 0	0 5 0	21 12 6	1 1 0
250,000	0 10 0	0 5 0	23 0 3	1 1 0
300,000	0 10 0	0 5 0	24 3 9	1 1 0
350,000	0 10 0	0 5 0	25 7 3	1 1 0
400,000	0 10 0	0 5 0	26 10 6	1 1 0
500,000	0 10 0	0 5 0	27 14 0	1 1 0
600,000	0 10 0	0 5 0	30 10 0	1 1 0
700,000	0 10 0	0 5 0	32 7 9	1 1 0
800,000	0 10 0	0 5 0	34 13 9	1 1 0
900,000	0 10 0	0 5 0	37 1 6	1 1 0
1,000,000	0 10 0	0 5 0	39 8 6	1 1 0

For every additional 100,000*l.*, or any fractional part of 100,000*l.*, under which the effects are sworn, in addition to the above fees, 2*l.* 7*s.*

In addition to the above for all second and subsequent grants the same fees for looking-up and taking an account of each former representation as on similar grants on which no stamp duty is payable.

Non-Contentious Business.

On Double or Cessate Probates on which no Stamp Duty is payable.

If the Effects are sworn under	Looking up and taking an Account of each former Grant.	Oath of the Executor.	Affidavit for Inland Revenue Office.	Double or Cessate Probate under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 2 6	0 2 6	0 1 0	0 1 0
100	0 5 0	0 5 0	0 5 0	0 1 0	0 2 0
200	0 5 0	0 6 6	0 5 0	0 3 0	0 2 0
300	0 5 0	0 6 6	0 5 0	0 7 6	0 2 0
450	0 5 0	0 6 6	0 5 0	0 12 0	0 2 0
600	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
800	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
1,000	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
1,500	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
2,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
3,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
4,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
5,000	0 5 0	0 6 6	0 5 0	0 12 6	0 7 6
Above 5,000	The fees to be taken are the same as above, except the fee for clerks, which, if the effects are of the value of 70,000*l.* or upwards, is 1*l.* 1*s.*				

On Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Looking up the grant of probate and original will, or grant of administration	0	5	0
Exemplification under seal, in addition to the 3*l.* stamp..	0	15	0
Clerks	0	2	6

On Duplicate and Triplicate Probates, or Letters of Administration (with or without Will annexed), &c.

Looking up the will	0	5	0
Duplicate or triplicate probate or letters of administration, with or without the will annexed, or probate of codicil to will already proved, or letters of administration (with same annexed), if the personal estate is sworn under 450*l.*, or any smaller sum, the same fees as on the original grant.			
If the personal estate is of the value of 450*l.* and upwards	0	12	6
Clerks	0	2	6

Non-Contentious Business.

On Letters of Administration, with or without Will annexed, de bonis non or cessate, on which no Stamp Duty is payable.

If the Effects are sworn under	Looking up and taking an Account of each former Grant.	Oath of the Administrator and Bond.	Affidavit for Inland Revenue Office.	De Bonis non or Cessate Administration under Seal and Duty-paid Stamp.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 4 0	0 2 6	0 1 0	0 1 0
50	0 3 6	0 6 0	0 3 0	0 1 6	0 2 0
100	0 5 0	0 7 6	0 5 0	0 3 0	0 2 0
200	0 5 0	0 10 0	0 5 0	0 4 6	0 2 0
300	0 5 0	0 10 0	0 5 0	0 12 0	0 2 0
450	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0
600	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0

If the effects are 600*l.* and upwards, the same fees as above, except the fee for clerks, which is 5*s.*

Instructions, Drawing, Copying, &c.

	£	s.	d.
Instructions for every oath, affidavit, instrument, or document, other than the oaths and affidavits and instruments of renunciation included in the foregoing fees	0	5	0
Drawing same, at per folio of 72 words	0	1	0
Copies of any documents prepared in the department for personal applications, not included in the foregoing fees, at per folio of 72 words	0	0	6
Instructions for special or limited probates, or letters of administration (*with or without will annexed*)	0	5	0
Attendances on settling oaths for special or limited grants	0	10	0

All other fees to be taken the same as for ordinary grants.

Perusing, &c.

	£	s.	d.
Perusing and settling oaths, affidavits, and other instruments and documents not drawn in the District Registry, if 6 folios of 72 words or under	0	1	6
If exceeding 6 folios, at per folio of 72 words	0	0	3

Non-Contentious Business.

COSTS

TO BE ALLOWED

PROCTORS, SOLICITORS, AND ATTORNIES

Practising in the Principal Registry of Court of Probate,

IN

NON-CONTENTIOUS BUSINESS.

In respect of Probates, including Double or Cessate Probates or Letters of Administration with Will annexed, de bonis non or cessate, upon which Stamp Duty is payable in respect of the Personal Estate of the Testator.

Effects sworn under	Oath of Executor and attendance on the party being sworn.		Affidavit for the Inland Revenue Office and attendance on the party being sworn		Engrossing & collating the Will, 3 fos. of 90 words or under, including parchment.		Probate under Seal.			Extracting.		Clerks.		
£	s.	d.	s.	d.	s.	d.	£	s.	d.	s.	d.	£	s.	d.
5	2	6	2	6	4	6	0	1	0	1	0		—	
20	2	6	2	6	4	6	0	1	0	3	4	0	1	0
100	5	0	5	0	4	6	0	1	0	6	8	0	2	0
200	6	8	6	8	4	6	0	3	0	6	8	0	2	0
300	10	0	10	0	4	6	0	7	6	6	8	0	2	0
450	10	0	10	0	4	6	0	12	0	6	8	0	2	0
600	10	0	10	0	4	6	0	16	6	6	8	0	2	0
800	10	0	10	0	4	6	1	2	6	6	8	0	2	0
1,000	10	0	10	0	4	6	1	13	0	6	8	0	2	0
1,500	10	0	10	0	4	6	2	5	0	6	8	0	5	0
2,000	10	0	10	0	4	6	3	0	0	6	8	0	5	0
3,000	10	0	10	0	4	6	3	15	0	13	4	0	5	0
4,000	10	0	10	0	4	6	4	10	0	13	4	0	5	0
5,000	10	0	10	0	4	6	4	15	0	13	4	0	7	6
6,000	10	0	10	0	4	6	5	0	0	13	4	0	7	6
7,000	10	0	10	0	4	6	5	5	0	13	4	0	7	6
8,000	10	0	10	0	4	6	5	10	0	13	4	0	7	6
9,000	10	0	10	0	4	6	5	15	0	13	4	0	7	6
10,000	10	0	10	0	4	6	6	0	0	13	4	0	7	6
12,000	10	0	10	0	4	6	6	5	0	13	4	0	7	6
14,000	10	0	10	0	4	6	6	10	0	13	4	0	7	6
16,000	10	0	10	0	4	6	6	17	6	13	4	0	7	6
18,000	10	0	10	0	4	6	7	5	0	13	4	0	7	6
20,000	10	0	10	0	4	6	7	12	6	13	4	0	7	6
25,000	10	0	10	0	4	6	8	2	6	13	4	0	7	6
30,000	10	0	10	0	4	6	8	15	0	13	4	0	7	6
35,000	10	0	10	0	4	6	9	7	6	13	4	0	7	6
40,000	10	0	10	0	4	6	10	6	3	13	4	0	7	6

Non-Contentious Business.

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn	Engrossing & collating the Will, 3 fos. of 90 words or under, including parchment.	Probate under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
45,000	10 0	10 0	4 6	11 5 0	13 4	0 7 6
50,000	10 0	10 0	4 6	12 3 9	13 4	0 7 6
60,000	10 0	10 0	4 6	13 2 6	13 4	0 7 6
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7 6
80,000	10 0	10 0	4 6	16 17 6	13 4	1 1 0
90,000	10 0	10 0	4 6	18 15 0	13 4	1 1 0
100,000	10 0	10 0	4 6	20 12 6	13 4	1 1 0
120,000	10 0	10 0	4 6	21 11 3	13 4	1 1 0
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0
180,000	10 0	10 0	4 6	27 3 9	13 4	1 1 0
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0

	£	s.	d.
And for every additional one hundred thousand pounds or any fractional part of one hundred thousand pounds under which the personal estate is sworn, in addition to the above fees, a further fee for probate under seal, of...	3	2	6
In addition to the above for all second or subsequent grants of probate or letters of administration with will annexed the same fees for looking up the will and bespeaking engrossment as on similar grants upon which no stamp duty is payable.			
For engrossing and collating the will, if more than three folios of ninety words each, per folio, including parchment.....	0	1	6
When there are two or more executors, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit:—			
If the effects are sworn under 20*l.*	0	2	6
If the effects are sworn under 100*l.*	0	5	0
If the effects are sworn above 100*l.*	0	6	8

In respect of Letters of Administration with Will annexed.

In addition to the above fees, for preparing and attendance on the execution of the bond if the effects are:—

	£	s.	d.
Under 20*l.*	0	2	6
20*l.* and under 100*l.*	0	6	8
100*l.* and upwards	0	10	0

Non-Contentious Business.

For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed, when there are pencil marks in the will or codicil, or when the will or codicil is to be registered fac simile, in addition to any other fee for engrossing and collating the same:—

	£	s.	d.
If the pencil marks in the will or codicil, or the part or parts thereof to be registered fac simile are two folios of 90 words in length or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of 90 words	0	0	6

In respect of Letters of Administration, including Letters of Administration de bonis non or cessate upon which Stamp Duty is payable in respect of the Personal Estate of the Intestate.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Letters of Administration under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	0 1 0	1 0	—
20	3 4	2 6	0 1 0	3 4	0 1 0
50	5 0	5 0	0 1 6	4 8	0 2 0
100	6 8	6 8	0 3 0	6 8	0 2 0
200	10 0	6 8	0 4 6	6 8	0 2 0
300	13 4	10 0	0 12 0	6 8	0 2 0
450	13 4	10 0	0 16 6	6 8	0 2 0
600	13 4	10 0	1 2 6	6 8	0 2 0
800	13 4	10 0	1 13 0	6 8	0 2 0
1,000	13 4	10 0	2 5 0	6 8	0 5 0
1,500	13 4	10 0	3 7 6	6 8	0 5 0
2,000	13 4	10 0	4 10 0	13 4	0 5 0
3,000	13 4	10 0	4 13 9	13 4	0 7 6
4,000	13 4	10 0	4 17 6	13 4	0 7 6
5,000	13 4	10 0	5 5 0	13 4	0 7 6
6,000	13 4	10 0	5 12 6	13 4	0 7 6
7,000	13 4	10 0	6 0 0	13 4	0 7 6
8,000	13 4	10 0	6 7 6	13 4	0 7 6
9,000	13 4	10 0	6 15 0	13 4	0 7 6
10,000	13 4	10 0	7 2 6	13 4	0 7 6
12,000	13 4	10 0	7 10 0	13 4	0 7 6
14,000	13 4	10 0	7 17 6	13 4	0 7 6
16,000	13 4	10 0	8 8 9	13 4	0 7 6
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	10 6 3	13 4	0 7 6

Non-Contentious Business.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Letters of Administration under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0

	£	s.	d.
And for every additional one hundred thousand pounds or any fractional part of one hundred thousand pounds under which the personal estate is sworn, in addition to the above fees, a further fee for letters of administration under seal of	4	13	6
When there are two or more administrators, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit, and on execution of the bond:—			
If the effects are under 20*l.*	0	3	4
If the effects are under 100*l.*	0	5	0
If the effects are above 100*l.*	0	10	0
In addition to the above fees, for preparing bond if the effects are:—			
Under 20*l.*	0	1	8
20*l.* and under 50*l.*	0	3	4
50*l.* and under 100*l.*	0	5	0
100*l.* and upwards	0	6	8

In respect of Double or Cessate Probates, upon which no Stamp Duty is payable.

If the effects are sworn under	Attendance in the Registry, and looking up the Will and bespeaking the engrossment.	Oath of the Executor and attendance on his being sworn.	Affidavit for Inland Revenue Office, and attendance on the Executor being sworn.	Drawing and copying statement in support of application for the duty-paid Stamp.	Attending the Commissioners of Stamps and procuring the duty-paid Stamp.	Double or Cessate Probate under Seal.	Extracting.	Clerks.
£	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*
5	3 4	2 6	2 6	—	—	1 0	1 0	—
20	3 4	2 6	2 6	—	—	1 0	3 4	1 0
100	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
200	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
300	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
450	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
600	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
800	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,500	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
2,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
3,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
4,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
5,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	7 6
Above 5,000	The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of 70,000*l.* or upwards, is 1*l.* 1*s.*							

The above fee for drawing and copying the statement in support of application for the duty-paid stamp is to be taken when the statement is five folios of seventy-two words or under. If the statement exceeds five folios, for each additional folio of seventy-two words ..... £ *s. d.* 0 1 4

When there are two or more executors to be sworn, and they are not sworn at the same time, for each attendance after the first on their being sworn, the same fee as on a first grant under the same sum.

Non-Contentious Business.

Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the Registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification	0	6	8
Exemplification under seal and stamp	1	1	0
Extracting	0	6	8
Clerks	0	2	6

In respect of Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

Attending in the Registry, looking up the Will, and bespeaking duplicate or triplicate of a grant and engrossment	0	6	8
Drawing and copying statement in support of application to the Inland Revenue office for the duty-paid stamp:— The same fee as on a double or cessate probate.			
Attending at the Inland Revenue office and procuring the duty-paid stamp	0	13	4
Duplicate or triplicate probate or letters of administration with or without will annexed. If the personal estate is under 450*l.* or any smaller sum, the same fee as on the original grant.			
If the personal estate is of the value of 450*l.* and upwards	0	12	6
Extracting	0	6	8
Clerks	0	2	6

[*In respect of Letters, &c.*

In respect of Letters of Administration with or without Will annexed de bonis non or Cessate, upon which no Stamp Duty is payable.

If the Effects are sworn under	Attending in the Registry, looking up and perusing the Will, and taking an account of the former Grant.	Oath of the Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Drawing and copying Statement in support of application to the Inland Revenue Office for the duty-paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De Bonis or Cessate Administration with or without Will under Seal and duty-paid Stamp.	Extracting.	Clerks.
£	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*
5	6 8	5 0	2 6	—	—	1 0	1 0	—
20	6 8	5 0	2 6	—	—	1 0	3 4	1 0
50	6 8	6 8	5 0	—	—	1 6	4 8	2 0
100	6 8	10 0	6 8	5 0	6 8	3 0	6 8	2 0
200	6 8	13 4	6 8	6 8	13 4	4 6	6 8	2 0
300	6 8	16 8	10 0	6 8	13 4	12 0	6 8	2 0
450	6 8	16 8	10 0	6 8	13 4	12 6	6 8	2 0
Above 450	The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1,500*l.* and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are 600*l.* and upwards, is 5*s.*							

	£	*s.*	*d.*
If there has been more than one previous grant, for each grant looked up after the first, a further fee of	0	5	0
The above fee for drawing and copying the statement in support of application to the Inland Revenue Office for the duty-paid stamp is to be taken if the statement is five folios of seventy-two words or under. If it exceeds five folios, for each additional folio	0	1	4

In addition to the above, for preparing the bond, and for each attendance after the first on the administrators being sworn, and on the execution of the bond, when there are two or more administrators and they are not sworn at the same time, the same fees as on ordinary grants of letters of administration.

Non-Contentious Business.

In respect of Probates, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Affidavit for Inland Revenue office and attendance on the executor being sworn thereto:—The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words	0	1	0
Fair copy of the oath for the Registrar, per folio of seventy-two words	0	0	4
Attending the Registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Each attendance on the executors being sworn	0	6	8
Engrossing and collating the will, Special or limited probate under seal, Extracting, Clerks	The same fees as on ordinary probates.		

In respect of Letters of Administration with or without Will annexed, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of seventy-two words	0	0	4
Proxy of nomination	0	13	4
Affidavit for Inland Revenue office and attendance on the administrators being sworn thereto:—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrators, per folio of seventy-two words	0	1	0
Fair copy of the oath for the Registrar to peruse, per folio of seventy-two words	0	0	4
Attending the Registrar thereon	0	13	4
Engrossing the same, per folio of seventy-two words	0	0	4
Each attendance on the administrators being sworn, and on execution of the bond	0	6	8
Engrossing and collating the will, Letters of administration, under seal and stamp, Extracting, Clerks	The same fees as on ordinary grants of letters of administration, with or without will annexed.		

Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	s.	d.
For attendance in the Registry and searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without will annexed, for five years, or any period less than five years, *including* the ordering of a copy	0	5	0

	£	s.	d.	Non-Contentious Business.
For every five years after the first five years	0	3	4	
For the perusal of a record, will, or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	0	4	
For collating an office copy or extract of a record, will, or other document, with the original, or a registered copy thereof, including extracting fee, per folio of ninety words	0	0	2	
For collating an office copy of the Act on granting probate or administration with the original entry thereof, including extracting fee	0	1	0	

Caveats.

For attendance in the Registry and entering or subducting a caveat	0	6	8
For attendance in the Registry and giving instructions for warning caveators to enter an appearance	0	6	8
For service of warning to a caveat, and copy	0	5	0

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration; and Declaration of Personal Estate and Effects.

For taking instructions for every affidavit or declaration of personal estate and effects	0	6	8
For drawing and fair copy of the same, per folio of seventy-two words	0	1	4
For every attendance on the deponents or declarants being sworn or affirmed to such affidavit or declaration	0	6	8

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents.

For taking instructions for every instrument of renunciation or consent, letters of attorney, or other document.	0	6	8
For drawing and fair copy thereof, per folio of seventy-two words	0	1	4

For Commissioners of the Court.

For each oath administered to each deponent by a commissioner, surrogate, or other person authorized to administer oaths in the Court of Probate	0	1	6
For marking each exhibit	0	1	0
For each occasion of superintending and attesting the execution of a bond	0	1	6

Non-Contentious Business.

Taxing Bill of Costs.

	£	*s.*	*d.*
For attendance on taxation of bill of costs	0	6	8

If long, such further fee as the Registrar may think proper.

Proctors, solicitors, and attornies are not entitled to any costs in addition to those allowed by the foregoing table in respect of the non-contentious business comprised therein; but in case of their transacting any business not therein provided for, they will be allowed as follows:—

	£	*s.*	*d.*
For instructions for any original instrument prepared by them	0	6	8
For perusing every document which it is necessary to peruse as instructions, per folio of 72 words.....	0	0	4
For drawing and fair copy of any original instrument, per folio of 72 words	0	1	4
For every plain copy of a document, per folio of 72 words	0	0	4
If the same, or any part thereof, is to be copied fac simile, for the part or parts to be so copied, per folio of 72 words, in addition to the above	0	0	2
For every necessary attendance on counsel, or on any practitioner or party other than their own client.....	0	6	8

Non-Contentious Business.

COSTS

TO BE ALLOWED

PROCTORS, SOLICITORS, AND ATTORNIES

Practising in the District Registries of the Court of Probate.

In respect of Probates, including Double or Cessate Probates or Letters of Administration with Will annexed de bonis non or cessate upon which Stamp Duty is payable in respect of the Personal Estate of the Testator.

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn	Engrossing & collating the Will, 3 fos. of 90 words or under, including parchment.	Probate under Seal.	Extracting.	Clerks.
£	*s. d.*	*s. d.*	*s. d.*	£ *s. d.*	*s. d.*	£ *s. d.*
5	2 6	2 6	4 6	0 1 0	1 0	—
20	2 6	2 6	4 6	0 1 0	3 4	0 1 0
100	5 0	5 0	4 6	0 1 0	6 8	0 2 0
200	6 8	6 8	4 6	0 3 0	6 8	0 2 0
300	10 0	10 0	4 6	0 7 6	6 8	0 2 0
450	10 0	10 0	4 6	0 12 0	6 8	0 2 0
600	10 0	10 0	4 6	0 16 6	6 8	0 2 0
800	10 0	10 0	4 6	1 2 6	6 8	0 2 0
1,000	10 0	10 0	4 6	1 13 0	6 8	0 2 0
1,500	10 0	10 0	4 6	2 5 0	6 8	0 5 0
2,000	10 0	10 0	4 6	3 0 0	6 8	0 5 0
3,000	10 0	10 0	4 6	3 15 0	13 4	0 5 0
4,000	10 0	10 0	4 6	4 10 0	13 4	0 5 0
5,000	10 0	10 0	4 6	4 15 0	13 4	0 7 6
6,000	10 0	10 0	4 6	5 0 0	13 4	0 7 6
7,000	10 0	10 0	4 6	5 5 0	13 4	0 7 6
8,000	10 0	10 0	4 6	5 10 0	13 4	0 7 6
9,000	10 0	10 0	4 6	5 15 0	13 4	0 7 6
10,000	10 0	10 0	4 6	6 0 0	13 4	0 7 6
12,000	10 0	10 0	4 6	6 5 0	13 4	0 7 6
14,000	10 0	10 0	4 6	6 10 0	13 4	0 7 6
16,000	10 0	10 0	4 6	6 17 6	13 4	0 7 6
18,000	10 0	10 0	4 6	7 5 0	13 4	0 7 6
20,000	10 0	10 0	4 6	7 12 6	13 4	0 7 6
25,000	10 0	10 0	4 6	8 2 6	13 4	0 7 6
30,000	10 0	10 0	4 6	8 15 0	13 4	0 7 6
35,000	10 0	10 0	4 6	9 7 6	13 4	0 7 6
40,000	10 0	10 0	4 6	10 6 3	13 4	0 7 6
45,000	10 0	10 0	4 6	11 5 0	13 4	0 7 6
50,000	10 0	10 0	4 6	12 3 9	13 4	0 7 6
60,000	10 0	10 0	4 6	13 2 6	13 4	0 7 6
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7 6
80,000	10 0	10 0	4 6	16 17 6	13 4	1 1 0
90,000	10 0	10 0	4 6	18 15 0	13 4	1 1 0
100,000	10 0	10 0	4 6	20 12 6	13 4	1 1 0
120,000	10 0	10 0	4 6	21 11 3	13 4	1 1 0
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0

Non-Contentious Business.

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn	Engrossing & collating the Will, 3 fos. of 90 words or under, including parchment.	Probate under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
180,000	10 0	10 0	4 6	27 3 9	13 4	1 1 0
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0

In addition to the above for all second or subsequent grants of probate or letters of administration with will annexed, the same fees for looking up the will and bespeaking engrossment as on similar grants upon which no stamp duty is payable.

	£	s.	d.
And for every additional one hundred thousand pounds or any fractional part of one hundred thousand pounds under which the personal estate is sworn, in addition to the above fees, a further fee for probate, under seal, of	3	2	6
For engrossing and collating the will, if more than three folios of ninety words each, per folio, including parchment	0	1	6
When there are two or more executors, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit—			
If the effects are sworn under 20*l.*	0	2	6
If the effects are sworn under 100*l.*	0	5	0
If the effects are sworn above 100*l.*	0	6	8

In respect of Letters of Administration with Will annexed.

In addition to the above fees, for preparing and attendance on the execution of the bond if the effects are—			
Under 20*l.*	0	2	6
20*l.* and under 100*l.*	0	6	8
100*l.* and upwards	0	10	0
For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed, when there are pencil marks in the will or codicil, or when the will or codicil is to be registered fac simile, in addition to any other fee for engrossing and collating the same:			
If the pencil marks in the will or codicil, or the part or parts thereof to be registered fac simile, are two folios of 90 words in length or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of 90 words	0	0	6

In respect of Letters of Administration, including Letters of Administration de bonis non or cessate upon which Stamp Duty is payable in respect of the Personal Estate of the Intestate.

Non-Contentious Business.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue and attendance on Administrator being sworn.	Letters of Administration under Seal.	Extracting.	Clerks.
£	*s. d.*	*s. d.*	£ *s. d.*	*s. d.*	£ *s. d.*
5	2 6	2 6	0 1 0	1 0	—
20	3 4	2 6	0 1 0	3 4	0 1 0
50	5 0	5 0	0 1 6	4 8	0 2 0
100	6 8	6 8	0 3 0	6 8	0 2 0
200	10 0	6 8	0 4 6	6 8	0 2 0
300	13 4	10 0	0 12 0	6 8	0 2 0
450	13 4	10 0	0 16 6	6 8	0 2 0
600	13 4	10 0	1 2 6	6 8	0 2 0
800	13 4	10 0	1 13 0	6 8	0 2 0
1,000	13 4	10 0	2 5 0	6 8	0 5 0
1,500	13 4	10 0	3 7 6	6 8	0 5 0
2,000	13 4	10 0	4 10 0	13 4	0 5 0
3,000	13 4	10 0	4 13 9	13 4	0 7 6
4,000	13 4	10 0	4 17 6	13 4	0 7 6
5,000	13 4	10 0	5 5 0	13 4	0 7 6
6,000	13 4	10 0	5 12 6	13 4	0 7 6
7,000	13 4	10 0	6 0 0	13 4	0 7 6
8,000	13 4	10 0	6 7 6	13 4	0 7 6
9,000	13 4	10 0	6 15 0	13 4	0 7 6
10,000	13 4	10 0	7 2 6	13 4	0 7 6
12,000	13 4	10 0	7 10 0	13 4	0 7 6
14,000	13 4	10 0	7 17 6	13 4	0 7 6
16,000	13 4	10 0	8 8 9	13 4	0 7 6
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	10 6 3	13 4	0 7 6
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0

Non-Contentious Business.

	£	s.	d.
And for every additional one hundred thousand pounds or any fractional part of one hundred thousand pounds under which the personal estate is sworn, in addition to the above fees, a further fee for letters of administration under seal of	4	13	6
When there are two or more administrators, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit and on execution of the bond—			
If the effects are under 20*l.*	0	3	4
If the effects are under 100*l.*	0	5	0
If the effects are above 100*l.*	0	10	0

In addition to the above fees, for preparing bond if the effects are—			
Under 20*l.*	0	1	8
20*l.* and under 50*l.*	0	3	4
50*l.* and under 100*l.*	0	5	0
100*l.* and upwards	0	6	8

[*In respect of Double or Cessate Probates, &c.*

In respect of Double or Cessate Probates, upon which no Stamp Duty is payable.

If the effects are sworn under	Attendance in the Registry, and looking up the Will and bespeaking the engrossment.	Oath of the Executor and attendance on his being sworn.	Affidavit for Inland Revenue Office, and attendance on the Executor being sworn.	Drawing and copying statement in support of application for the duty-paid Stamp.	Attending the Commissioners of Stamps and procuring the duty-paid Stamp.	Double or Cessate Probate under Seal.	Extracting.	Clerks.
£	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*
5	3 4	2 6	2 6	—	—	1 0	1 0	—
20	3 4	2 6	2 6	—	—	1 0	3 4	1 0
100	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
200	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
300	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
450	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
600	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
800	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,500	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
2,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
3,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
4,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
5,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	7 6
Above 5,000	The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of 70,000*l.* or upwards, is 1*l.* 1*s.*							

The above fee for drawing and copying the statement in support of application for the duty-paid stamp is to be taken when the statement is five folios of seventy-two words or under. If the statement exceeds five folios, for each additional folio of seventy-two words ..... £ *s. d.* 0 1 4

When there are two or more executors to be sworn, and they are not sworn at the same time, for each attendance after the first on their being sworn, the same fee as on a first grant under the same sum.

Non-Contentious Business.

Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	*s.*	*d.*
Attending in the District Registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification	0	6	8
Exemplification under seal and stamp	1	1	0
Extracting	0	6	8
Clerk	0	2	6

In respect of Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

Attending in the District Registry, looking up the will, and bespeaking duplicate or triplicate of a grant and engrossment	0	6	8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp :— The same fee as on a double or cessate probate.			
Attending at the Inland Revenue Office and procuring the duty-paid stamp	0	13	4
Duplicate or triplicate probate or letters of administration with or without the will annexed. If the personal estate is under 450*l.* or any smaller sum, the same fee as on the original grant.			
If the personal estate is of the value of 450*l.* and upwards	0	12	6
Extracting	0	6	8
Clerks	0	2	6

Letters of Administration with or without Will annexed de bonis non or Cessate, upon which no Stamp Duty is payable.

If the effects are sworn under	Attending in the Registry, looking up and perusing the Will, and taking an account of the former Grant.	Oath of the Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Drawing and copying Statement in support of application to the Inland Revenue Office for the duty-paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis or Cessate Administration with or without Will under Seal and duty-paid Stamp.	Extracting.	Clerks.
£	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*
5	6 8	5 0	2 6	—	—	1 0	1 0	—
20	6 8	5 0	2 6	—	—	1 0	3 4	1 0
50	6 8	6 8	5 0	—	—	1 6	4 8	2 0
100	6 8	10 0	6 8	5 0	6 8	3 0	6 8	2 0
200	6 8	13 4	6 8	6 8	13 4	4 6	6 8	2 0
300	6 8	16 8	10 0	6 8	13 4	12 0	6 8	2 0
450	6 8	16 8	10 0	6 8	13 4	12 6	6 8	2 0
Above 450	The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1,500*l.* and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are 600*l.* and upwards, 5*s.*							

	£	*s.*	*d.*
If there has been more than one previous grant, for each grant looked up after the first, a further fee of	0	5	0
The above fee for drawing and copying the statement in support of application to the Inland Revenue Office for the duty-paid stamp is to be taken if the statement is five folios of seventy-two words or under. If it exceed five folios, for each additional folio	0	1	4

In addition to the above fees: for preparing the bond, and for each attendance after the first on the administrators being sworn, and on execution of the bond, when there are two or more administrators and they are not sworn at the same time, the same fees as on ordinary grants of letters of administration.

Non-Contentious Business.

In respect of Probates, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Affidavit for Inland Revenue Office and attendance on the executor being sworn thereto:—			
The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words	0	1	0
Fair copy of the oath for the District Registrar, per folio of seventy-two words	0	0	4
Attending the District Registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance on the executor being sworn	0	6	8
Engrossing and collating the will Special or limited probate, under seal Extracting Clerks	The same fees as on ordinary probates.		

In respect of Letters of Administration with or without Will annexed, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of seventy-two words	0	0	4
Proxy of nomination	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn thereto:—			
The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the District Registrar to peruse, per folio of seventy-two words	0	0	4
Attending the District Registrar thereon	0	13	4
Engrossing same per folio of seventy-two words	0	0	4
Attendance on the administrators being sworn, and on execution of the bond	0	6	8
Engrossing and collating the will Letters of administration, under seal and stamp Extracting Clerks	The same fees as on ordinary grants of letters of administration with or without the will annexed.		

Non-Contentious Business.

Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	*s.*	*d.*
For attendance in the District Registry and searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for five years, or any period less than five years, *including* the ordering of a copy	0	5	0
For every five years after the first five years	0	3	4
For the perusal of a record, will, or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	0	4
For collating an office copy or extract of a record, will, or other document, with the original, or a registered copy thereof, including extracting fee, per folio of ninety words	0	0	2
For collating an office copy of the Act on granting probate or administration with the original entry thereof, including extracting fee	0	1	0

Caveats.

For attendance in the District Registry and entering or subducting a caveat	0	6	8
For service of warning to a caveat, and copy	0	5	0

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration; and Declarations of Personal Estate and Effects.

For taking instructions for every affidavit or declaration of personal estate and effects	0	6	8
For drawing and fair copy of the same, per folio of seventy-two words	0	1	4
For every attendance on the deponents or declarants being sworn or affirmed to such affidavits or declarations	0	6	8

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents.

For taking instructions for every instrument of renunciation or consent, letter of attorney, or other document	0	6	8
For drawing a fair copy thereof, per folio of seventy-two words	0	1	4

Non-Contentious Business.

For Commissioners of the Court.

	£	s.	d.
For each oath administered to each deponent by a commissioner, surrogate, or other person authorized to administer oaths in the Court of Probate	0	1	6
For marking each exhibit	0	1	0
For each occasion of superintending and attesting the execution of a bond	0	1	6
Proctors, solicitors, and attornies are not entitled to any costs in addition to those allowed by the foregoing tables in respect of the business comprised therein; but in case of their transacting any business not therein provided for, they will be allowed as follows:—			
For instructions for any original instrument prepared by them	0	6	8
For perusing every document which it is necessary to peruse as instructions, per folio of seventy-two words	0	0	4
For drawing and fair copy of any original instrument, per folio of seventy-two words	0	1	4
For every plain copy of a document, per folio of seventy-two words	0	0	4
If the same or any part thereof is to be copied fac simile, for the part or parts to be so copied, per folio of seventy-two words in addition to the above	0	0	2
For every necessary attendance on counsel, or on any practitioner or party other than their own parties..	0	6	8

Non-Contentious Business.

AMENDED

TABLE OF FEES

TO BE TAKEN IN THE

PRINCIPAL REGISTRY OF THE COURT OF PROBATE

IN NON-CONTENTIOUS BUSINESS.

On letters of administration granted to a widow of an intestate or to one or more of his children, or to one or more of the children of an intestate widow, on personal application at the Principal Registry, other than letters of administration granted in pursuance of the provisions of the Act of 36 & 37 Vict. c. 52, as extended by the Act of 38 & 39 Vict. c. 27, in lieu of all fees heretofore authorized to be taken when the personal estate is sworn:—

	£	s.	d.
Not to exceed in value 20*l.*	0	5	0
Not to exceed in value 30*l.*	0	6	0
Not to exceed in value 40*l.*	0	7	0
Not to exceed in value 50*l.*	0	8	0
Not to exceed in value 60*l.*	0	9	0
Not to exceed in value 70*l.*	0	10	0
Not to exceed in value 80*l.*	0	11	0
Not to exceed in value 90*l.*	0	12	0
Not to exceed in value 100*l.*	0	13	0

The above include the fees payable for taking instructions for, and drawing, and copying an instrument of renunciation to be executed by the widow of an intestate if required, and all other fees payable in respect of such grants.

Non-Contentious Business.

AMENDED TABLE OF FEES

To be taken in the District Registries of the Court of Probate in Non-contentious Business.

On letters of administration granted to a widow of an intestate, or to one or more of his children, or to one or more of the children of an intestate widow, on personal application at a District Registry, other than letters of administration granted in pursuance of the provisions of the Act of 36 & 37 Vict. c. 52, as extended by the Act of 38 & 39 Vict. c. 27, in lieu of all fees heretofore authorized to be taken when the personal estate is sworn :—

	£	*s.*	*d.*
Not to exceed in value 20*l.*	0	5	0
Not to exceed in value 30*l.*	0	6	0
Not to exceed in value 40*l.*	0	7	0
Not to exceed in value 50*l.*	0	8	0
Not to exceed in value 60*l.*	0	9	0
Not to exceed in value 70*l.*	0	10	0
Not to exceed in value 80*l.*	0	11	0
Not to exceed in value 90*l.*	0	12	0
Not to exceed in value 100*l.*	0	13	0

The above include the fees payable for taking instructions for, and drawing, and copying an instrument of renunciation to be executed by the widow of an intestate if required, and all other fees payable in respect of such grants.

Non-Contentious Business.

AMENDED

RULES AND ORDERS

FOR THE

REGISTRARS OF THE PRINCIPAL PROBATE REGISTRY

AND FOR THE

DISTRICT PROBATE REGISTRARS

IN NON-CONTENTIOUS BUSINESS.

Rules 52, 53, and 72 of the Rules, Orders, and Instructions for the Registrars of the Principal Probate Registry in respect of non-contentious business, dated 30th July, 1862, and Rules 65 and 66 of the Rules, Orders, and Instructions for the District Probate Registrars, dated the 27th January, 1863, are respectively repealed, save so far as concerns anything done or proceeding taken in accordance with them, and in place of the said Rules it is ordered that the following Rules shall take effect:—

IN THE PRINCIPAL PROBATE REGISTRY.

52. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

53. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall, without leave of the Court or of one of the Registrars, be filed or made use of in any matter depending in the Probate Court or Registry, unless the interlineation or alteration other than by erasure is authenticated by the initials of the officer taking the affidavit, nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

72. When any alteration is made in a grant of probate or letters of administration which has issued from a District Probate Registry, or when any such a grant is revoked and the volume of the printed calendar containing the entry of the grant has been forwarded to the District Registrars, notice of such alteration or revocation is

Non-Contentious Business.

without delay to be forwarded by the Registrars of the Principal Registry to the District Probate Registrar from whose Registry the altered or revoked grant issued.

IN THE DISTRICT PROBATE REGISTRIES.

65. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

66. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall be filed or made use of, unless the interlineation or alteration other than by erasure is authenticated by the initials of the officer taking the affidavit, nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

AMENDED RULES, ORDERS, & INSTRUCTIONS

FOR THE REGISTRARS OF THE PRINCIPAL PROBATE REGISTRY, AND FOR THE DISTRICT PROBATE REGISTRARS, IN NON-CONTENTIOUS BUSINESS.

Rule 15 of the Rules, Orders, and Instructions for the Registrars of the Principal Probate Registry in non-contentious business, dated 30th July, 1862, and Rule 18 of the Rules, Orders, and Instructions for the District Probate Registrars in such business, dated the 27th January, 1863, are respectively repealed, save so far as concerns anything done or proceeding taken in accordance with them, and in place of the said Rules it is ordered that the following Rules shall take effect:—

Rules 15 and 18. In a grant of probate of the will of a married woman, or of the will of a widow made during coverture, or letters of administration with such wills annexed, it shall not be necessary to recite in the grant or in the oath to lead the same the separate personal estate of the testatrix or the power or authority under which the will has been or purports to have been made. The probate or letters of administration with will annexed in such cases shall take the form of ordinary grants of probate or letters of administration with will annexed without any exception or limita-

tion, and issue to an executor or other person authorised in usual course of representation to take the same; a surviving husband, however, being entitled to the same in preference to the next of kin of the testatrix in case of a partial intestacy.

Non-Contentious Business.

The forms of instruments annexed to the before-mentioned Rules, Orders, and Instructions for the Registrars of the Principal Probate Registry, numbered 12, 13 and 14, and in the Rules, Orders, and Instructions for the District Probate Registrars, numbered 13, 14 and 15, and thereby directed to be adopted as nearly as the circumstances of the case will allow in respect of the wills of married women, shall cease to be adopted in respect of such wills, except so far as the same may be applicable to oaths sworn before these Rules and Orders take effect, and also except so far as the same may be applicable to any second or subsequent grants required to complete the representation in cases where limited or special grants have already issued.

ADDITIONAL RULES AND ORDERS

For the Registrars of the Principal Probate Registry in Non-Contentious Business.

For carrying out the Provisions of the Colonial Probates Act, 1892.

92. Application to seal a grant of probate or letters of administration or copy thereof under the Colonial Probates Act, 1892, may be made in the Principal Probate Registry by the executor or administrator or the attorney [lawfully authorised for the purpose] of such executor or administrator, either in person or through a solicitor.

93. Such application must be accompanied by an oath of the executor, administrator, or attorney in the form in the Appendix or as nearly thereto as the circumstances of the case will allow.

94. The Registrars are to be satisfied that notice of such application has been duly advertised. (Form of advertisement in Appendix.)

95. On application to seal letters of administration the administrator or his attorney shall give bond (in the form set out in the Appendix) to cover the personal estate of the deceased within the jurisdiction of the Court. The same practice as to sureties and amount of penalty in bond is to be observed as on application for letters of administration.

Non-Contentious Business.

96. Application by a creditor under section 2, sub-section 3, of the Colonial Probates Act is to be made by summons before one of the Registrars, supported by an affidavit setting out particulars of the claim.

97. In every case, and especially when the domicile of the deceased at the time of death as sworn to in the affidavit differs from that suggested by the description in the grant, the Registrars may require further evidence as to domicile.

98. If it should appear that the deceased was not at the time of death domiciled within the jurisdiction of the Court from which the grant issued, the seal is not to be affixed unless the grant is such as would have been made by the High Court of Justice in England.

99. The grant [or copy grant] to be sealed and the copy to be deposited in the Registry must include copies of all testamentary papers admitted to probate.

100. When application to seal a probate or letters of administration is made after the lapse of three years from the death of the deceased the reason of the delay is to be certified to the Registrars. Should the certificate be unsatisfactory the Registrars are to require such proof of the alleged cause of delay as they may think fit.

101. Special or limited or temporary grants are not to be sealed without an order of one of the Registrars.

102. Notice of the sealing in England of a grant is to be sent to the Court from which the grant issued.

103. When intimation has been received of the resealing of an English grant, notice of the revocation of, or any alteration in such grant is to be sent to the Court by whose authority such grant was resealed.

104. The affidavit for Inland Revenue pursuant to the Customs and Inland Revenue Acts, 1880 and 1881, shall be transmitted to the Commissioners of Inland Revenue as if the person who applied for sealing under the Colonial Probates Act, 1892, were a person applying for probate or letters of administration.

105. The affidavit for Inland Revenue and accounts and schedules forming part thereof shall be in such form as may be prescribed by the Commissioners of her Majesty's treasury.

[NOTE.—The affidavit to be used will in fact be Form A. with some few modifications to suit the circumstances.]

106. See page 787.

107. See page 788.

108. See page 789.

109. See page 790.

Non-Contentious Business.

APPENDIX.

Forms (Colonial Probates Act, 1892).

Oath.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.

(Probate.)

In the goods of A. B. deceased.

I, C. D. (*or* E. F.), of make oath and say:—

1. That a grant of probate of the will (or letters of administration of the personal estate) of A. B., late of deceased was granted to me (*or* C. D.) by the Court at on the day of .

2. That the said deceased was at the time of his death domiciled at , [*the following words to be struck out if inapplicable*] within the jurisdiction of the said Court.

3. That the notice hereunto annexed was inserted in the "Times" newspaper on the day of .

4. That I am the attorney lawfully appointed of C. D. under his hand and seal, and am duly authorised to apply to this Court for the sealing of the said grant. [*This paragraph to be struck out if inapplicable.*]

5. That the value of the personal estate in England amounts in value to the sum of and no more, to the best of my knowledge, information and belief.

Sworn, &c.

Advertisement.

A. B. deceased.

Notice is hereby given that after the expiration of eight days application will be made in the Principal Probate Registry of the High Court of Justice for the sealing of the probate of the will (or letters of administration of the personal estate) of A. B., late of , deceased, granted by the Court at on the day of 18 .

Solicitors for .

(*To be advertised once in the "Times" newspaper unless otherwise directed by one of the Registrars.*)

Administration Bond (with or without Will).

Know all Men by these Presents, that we, A. B., of , C. D., of , and E. F., of , are jointly and severally bound unto G. H., the President of the Probate, Divorce and Admiralty Division of her Majesty's High Court of Justice,

Non-Contentious Business.

in the sum of pounds, of good and lawful money of Great Britain, to be paid to the said G. H., or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals.

Dated the day of in the year of our Lord One thousand eight hundred and ninety .

The condition of this obligation is such, that if the above-named A. B., the administrator (with the will dated the day of annexed) by authority of the Court at , acting under letters of administration granted to on the day of , and now about to be sealed in England under the Colonial Probates Act, 1892, of the personal estate of K. L., late of , deceased, who died on the day of , 18 , do, when lawfully called on in that behalf, make, or cause to be made, true and perfect inventory of the personal estate of the said deceased in England which has or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for , and the same so made do exhibit, or cause to be exhibited, into the Principal Probate Registry of her Majesty's High Court of Justice, whenever required by law so to do, and the same personal estate do well and truly administer according to law; And further do make, or cause to be made, a true and just account of said administration, whenever required by law so to do, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the within-named
in the presence of
A Commissioner of Oaths.

Administration Bond (with or without Will) on application by Attorney.

KNOW all Men by these Presents, that we, A. B., of , C. D., of , and E. F., of , are jointly and severally bound unto G. H., the President of the Probate, Divorce, and Admiralty Division of her Majesty's High Court of Justice, in the sum of pounds, of good and lawful money of Great Britain, to be paid to the said G. H., or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals.

Dated the day of in the year of our Lord One thousand eight hundred and ninety .

The condition of this obligation is such, that if K. L., of , the administrator (with the will dated the day of ,

annexed), by authority of the Court at , acting under letters of administration granted to on the day of , and now about to be sealed in England under the Colonial Probate Act, 1892, of the personal estate of M. N., late of , deceased, who died on the day of , 18 , do, when lawfully called on in that behalf, make, or cause to be made, a true and perfect inventory of the personal estate of the said deceased in England which has or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for , and the same so made do exhibit, or cause to be exhibited, into the Principal Probate Registry of her Majesty's High Court of Justice, whenever required by law so to do, and the same personal estate do well and truly administer according to law; And further do make, or cause to be made, a true and just account of said administration, whenever required by law so to do, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Non-Contentious Business.

Signed, sealed, and delivered by the within-named in the presence of
A Commissioner for Oaths.

ORDER AS TO SUPREME COURT FEES.

I, the Right Honourable Farrer, Baron Herschell, Lord High Chancellor of Great Britain, by and with the consent of the undersigned Judges of the Supreme Court and with the concurrence of the Lords Commissioners of her Majesty's Treasury, do hereby, in pursuance and execution of the powers given to me by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling me in this behalf, order and direct in manner following:—

(1.) The fees hereunder written are fixed and appointed to be taken in the Principal Probate Registry in respect of applications under the Colonial Probates Act, 1892, in addition to any fees payable under the existing Table of Fees in non-contentious business.

	s.	d.
For affixing the seal of the Court to any grant of probate or letters of administration, with or without will annexed, or copy thereof, in order to its becoming in force for property in England, such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be affected by the probate or other instrument to which the seal of the Court is to be affixed.		
For the Registrar's fiat	5	0

Non-Contentious Business.

If the application to seal under the above-mentioned Act be made through the Personal Application Department, the additional fees payable when a grant is extracted through that department, inclusive of the ad valorem fee for probate or letters of administration under seal, are to be taken. *s. d.*

(2.) The existing fee for affixing the seal of the Court to an Irish grant is hereby amended as follows:—

On and after the 1st of February, 1893, for affixing the seal of the Court to any grant of probate or letters of administration, with or without will annexed, or to any exemplification of probate or letters of administration with or without will annexed, under seal of the Court of Probate in Ireland in order to its becoming in force for property in England,—such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be effected by the probate or other instrument to which the seal of the Court is to be affixed, except as under:—

When the property in England amounts to or exceeds 300*l.* in value, and is shown to have been included in the property in respect of which a fee was paid in Ireland 12 6

HERSCHELL, C.
COLERIDGE, C. J.
F. H. JEUNE, P.
J. GORELL BARNES, J.

12th December, 1892.

We certify that this Order is made with concurrence of the Commissioners of her Majesty's Treasury.

THOMAS E. ELLIS.
W. A. MCARTHUR.

Non-Contentious Business.

ADDITIONAL RULE AND ORDER

FOR THE REGISTRARS OF THE PRINCIPAL AND DISTRICT PROBATE REGISTRIES WITH REGARD TO NON-CONTENTIOUS BUSINESS.

By virtue and in pursuance of the provisions of the statutes 20 & 21 Vict. c. 77, 38 & 39 Vict. c. 77, and 57 & 58 Vict. c. 30, I, the Right Honourable Sir Francis Henry Jeune, Knight, President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, with the concurrence of the Right Honourable Farrer, Baron Herschell, Lord High Chancellor of Great Britain, and of the Right Honourable Charles, Baron Russell of Killowen, Lord Chief Justice of England, do make and issue the following additional rule and order for the Registrars of the Principal and District Probate Registries with regard to non-contentious business.

Dated the 1st day of August, 1894.

F. H. JEUNE, P.

Approved:—
HERSCHELL, C.
RUSSELL OF KILLOWEN, C. J.

Additional Rule and Order for the Registrars of the Principal and District Probate Registries with regard to Non-Contentious Business.

(*The Number of the Rule for the Principal Probate Registry is* 106; *and for the District Registries* 101.)

The certificate required to be given by the proper officer of the Court under sect. 30 of the Customs and Inland Revenue Act, 1881, shall for the purposes of the Finance Act, 1894, and subject to any necessary variations and modifications, which the officer of the Court is hereby authorised at his discretion to make, be in the form following:—

> And it is hereby certified that an affidavit for Inland Revenue has been delivered, wherein it is shown that the gross value of the personal estate of the said deceased within the United Kingdom (exclusive of what the deceased may have been possessed of or entitled to as a trustee and not beneficially) amounts to £ , and that it appears by a receipt signed by an Inland Revenue officer on the said affidavit that £ for estate duty and interest thereon has been paid, the duty being charged at the rate of £ per cent.

Non-Contentious Business.

ADDITIONAL RULES AND ORDERS

FOR THE REGISTRARS OF THE PRINCIPAL AND DISTRICT PROBATE REGISTRIES WITH REGARD TO NON-CONTENTIOUS BUSINESS.

By virtue and in pursuance of the provisions of the statutes 20 & 21 Vict. c. 77, and 38 & 39 Vict. c. 77, I, the Right Honourable Sir Francis Henry Jeune, Knight, President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, with the concurrence of the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, and of the Right Honourable Charles, Baron Russell of Killowen, Lord Chief Justice of England, do make and issue the following additional Rules and Orders for the Registrars of the Principal and District Probate Registries with regard to non-contentious business.

Dated the 11th day of December, 1896.

F. H. JEUNE, P.

Approved.

HALSBURY, C.
RUSSELL OF KN., C. J.

Additional Rule and Order for the Registrars of the Principal and District Probate Registries.

"In any case in which it is intended to apply for the resealing in Ireland of any grant of probate or letters of administration made in the Probate Division of the High Court of Justice in England, the executor or administrator may deposit in the Principal or District Probate Registry where the grant has been made a copy of such grant of probate or letters of administration, together with the original and any certificate or certificates that may be required, and the fees payable in Ireland in respect of such re-sealing, and the Registrar shall transmit by post the documents so deposited, together with such fees to the Registrar of the Principal Probate Registry in Ireland, for the purpose of such grant being resealed under the provisions of 20 & 21 Vict. c. 79, s. 94."

The number of this Rule for the Principal Registry is 107; and for the District Registries is 102.

Non-Contentious Business.

Further Additional Rule and Order for the Registrars of the Principal Probate Registry.

"The Registrar of the Principal Probate Registry in England shall, upon receiving by post from a Probate Registry in Ireland any grant of probate or letters of administration made in the Probate and Matrimonial Division of the High Court of Justice in Ireland, together with a copy thereof, and any certificate or certificates that may be required, and the fees payable in England in respect of the resealing of an Irish grant, cause such grant to be resealed in conformity with the provisions of 20 & 21 Vict. c. 79, s. 95, and shall transmit the grant so resealed to the Registrar of the Probate Registry in Ireland from whom it was received."

The number of this Rule is 108.

Non-Contentious Business.

ADDITIONAL RULE AND ORDER

For the Registrars of the Principal and District Probate Registries with regard to Non-Contentious Business.

By virtue and in pursuance of the provisions of the statutes 20 & 21 Vict. c. 77, 38 & 39 Vict. c. 77, and 60 & 61 Vict. c. 65, I, the Right Honourable Sir Francis Henry Jeune, K.C.B., President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, with the concurrence of the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, and of the Right Honourable Charles, Baron Russell of Killowen, Lord Chief Justice of England, do make and issue the following additional rule and order for the Registrars of the Principal and District Probate Registries with regard to non-contentious business.

Dated the 20th day of November, 1897.

F. H. Jeune, P.

Approved:

Halsbury, C.

Russell of Kn., C. J.

Additional Rule and Order.

For the Registrars of the Principal and District Probate Registries.

"All rules orders and instructions and the existing practice of the Court with respect to non-contentious business shall so far as the circumstances of each case will allow be applicable to grants of probate and administration made under the authority of the Land Transfer Act, 1897."

The number of this rule for the Principal Registry is 109; and for the District Registries 103.

Non-Contentious Business.

FEES.

Will or Administration Will.

The High Court of Justice. Probate, Divorce, and Admiralty Division.

(Probate.) Principal Registry.

——— *deceased.*

	£	*s.*	*d.*
Receipt	0	1	0
Registering and collating will, per folio, 1*s.* 6*d.*, minimum 4*s.* 6*d.* ..... fos.			
Registering fac simile or pencil writing, 6*d.* per folio, minimum charge 1*s.* ..... fos.			
Re-collating, 3*d.* per folio ..... fos.			
Collating copy to register from, 3*d.* per folio..... fos.			
Certificate of Registrar	0	2	6

Filing affidavit, each affidavit 2*s.*
Filing renunciation, 2*s.* 6*d.*
Filing election, 2*s.* 6*d.*
Filing declaration, 2*s.* 6*d.*
Filing certificate of reason of delay, 2*s.* 6*d.*
Filing power of attorney, 2*s.* 6*d.*
Probate or administration will, under seal, net personal estate } £
Search, 18 , 6*d.* per year.
Registrar's fiat, 5*s.*
Special or limited grant, 2*s.* per folio.
,, ,, Act, 2*s.* per folio.
,, ,, bond, 2*s.* per folio.
Noting record of first grant and notice, 2*s.* 6*d.* and 1*s.*
Noting domicile, 5*s.*

Duty £
Rate..... per cent.

Administration.

The High Court of Justice. Probate, Divorce, and Admiralty Division.

Principal Probate Registry.

——— *deceased.*

	£	*s.*	*d.*
Receipt	0	1	0
Certificate of Registrar	0	2	6

Renunciation, each filing 2*s.* 6*d.*
Affidavit ,, 2*s.*
Election ,, 2*s.* 6*d.*
Declaration ,, 2*s.* 6*d.*
Certificate of reason of delay, filing 2*s.* 6*d.*
Power of attorney, filing 2*s.* 6*d.*
Administration under seal, net personal estate ..... } £

Non-Contentious Business.

Search, 6*d.* per annum.
Special or limited grant, 2*s.* per folio.
,, ,, Act, 2*s.* per folio.
,, ,, bond, 2*s.* per folio.
Noting record of first grant and notice, 2*s.* 6*d.* and 1*s.*
Noting domicile, 5*s.*
Duty £
Rate..... per cent.

Sealing Irish, Scotch, and Colonial Grants.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.

Principal Probate Registry.

deceased.

Irish Probate.	£	*s.*	*d.*
Receipt	0	1	0
Collating copy probate, 3*d.* per folio, minimum 2*s.* 6*d.* ..... fos.			
Search, 6*d.* per annum.			
Fiat	0	5	0
Sealing fee effects in England £			
Filing copy probate	0	2	6
Filing Inland Revenue certificate as to duty	0	2	6
*Irish Administration.**			
Receipt	0	1	0
Collating copy administration,* 3*d.* per folio, minimum 2*s.* 6*d.* ..... fos.			
Search, 6*d.* per annum.			
Fiat	0	5	0
Sealing fee effects in England £			
Filing copy administration*	0	2	6
Filing Inland Revenue certificate as to duty	0	2	6
Filing certificate as to bond	0	2	6
Scotch Confirmation.			
Receipt	0	1	0
Collating copy confirmation, 3*d.* per folio, minimum 2*s.* 6*d.* ..... fos.			
Search, 6*d.* per annum.			
Sealing fee	1	1	0
Filing copy confirmation	0	2	6
Colonial Grant.			
Receipt	0	1	0
Collating copy grant, 3*d.* per folio, minimum 2*s.* 6*d.*... fos.			
Search, 6*d.* per annum.			
Registrar's fiat and certificate	0	7	6
Sealing fee effects in England £			
Filing copy grant	0	2	6
Filing power of attorney (if any) 2*s.* 6*d.*			
Filing certificate of delay (if any) 2*s.* 6*d.*			

Duty £
Rate..... per cent.

* (With will) to be added when applicable.

Non-Contentious Business.

Administration Will.

The High Court of Justice. Probate, Divorce, and Admiralty Division.

Principal Probate Registry.

——— *deceased.*

Representation under 44 Vict. c. 12, s. 33, or 57 & 58 Vict. c. 30, s. 16.

	£	*s.*	*d.*
Court fees and expenses	0	15	0

Duty £

PRINCIPAL PROBATE REGISTRY.

Fees and Duties Payable on Grants.

Fees.

Net Personal Estate under	Probate under Seal.			Administration under Seal.			Net Personal Estate under	Probate under Seal.			Administration under Seal.		
£	£	*s.*	*d.*	£	*s.*	*d.*	£	£	*s.*	*d.*	£	*s.*	*d.*
100	0	1	0	0	1	0	60,000	13	2	6	17	16	3
200	0	3	0	0	4	6	70,000	15	0	0	20	12	6
300	0	7	6	0	12	0	80,000	16	17	6	23	8	9
450	0	12	0	0	16	6	90,000	18	15	0	26	5	0
600	0	16	6	1	2	6	100,000	20	12	6	29	1	3
800	1	2	6	1	13	0	120,000	21	11	3	30	9	6
1,000	1	13	0	2	5	0	140,000	23	8	9	33	5	9
1,500	2	5	0	3	7	6	160,000	25	6	3	36	2	0
2,000	3	0	0	4	10	0	180,000	27	3	9	38	18	3
3,000	3	15	0	4	13	9	200,000	29	1	3	41	14	6
4,000	4	10	0	4	17	6	250,000	30	18	9	44	10	9
5,000	4	15	0	5	5	0	300,000	35	12	6	46	17	6
6,000	5	0	0	5	12	6	350,000	40	6	3	49	4	6
7,000	5	5	0	6	0	0	400,000	41	17	6	51	11	3
8,000	5	10	0	6	7	6	500,000	43	8	9	53	18	3
9,000	5	15	0	6	15	0	600,000	46	11	3	58	11	9
10,000	6	0	0	7	2	6	700,000	49	13	9	63	5	3
12,000	6	5	0	7	10	0	800,000	52	16	3	67	18	9
14,000	6	10	0	7	17	6	900,000	55	18	9	72	12	3
16,000	6	17	6	8	8	9	1,000,000	59	1	3	77	5	9
18,000	7	5	0	9	0	0							
20,000	7	12	6	9	11	3	For every additional 100,000*l.*						
25,000	8	2	6	10	6	3	or any fractional part of						
30,000	8	15	0	11	5	0	100,000*l.* a further additional						
35,000	9	7	6	12	3	9	fee of	3	2	6	4	13	6
40,000	10	6	3	13	11	3							
45,000	11	5	0	15	0	0							
50,000	12	3	9	16	7	6							

Non-Contentious Business.

DUTIES.

Probate Duty.

(Under Customs and Inland Revenue Act, 1881.)

Payable on personal estate only, and when the death occurred on or before 1st August, 1894.

Where the estate—	*Duty.* £	*s.*	*d.*
Exceeds 100*l.* but does not exceed 500*l.*, for each 50*l.* or fraction of 50*l.*	1	0	0
Exceeds 500*l.* but does not exceed 1,000*l.*, for each 50*l.* or fraction of 50*l.*	1	5	0
Exceeds 1,000*l.*, for each 100*l.* or part of 100*l.*	3	0	0
Exceeds 10,000*l.*, for each 100*l.* or part of 100*l.* (under 52 Vict. c. 7, s. 5)	4	0	0

If the deceased died domiciled in the United Kingdom debts due to persons in the United Kingdom and funeral expenses may be deducted in estimating the value of the estate for duty.

Small Estates.

(Under sect. 33, Customs and Inland Revenue Act, 1881.)

Where the gross value of the personal estate, wherever situate, of a person dying on or after 1st June, 1881, and before 2nd August, 1894—

	Fixed Duty. £	*s.*	*d.*
Exceeds 100*l.* but does not exceed 300*l.* (denoted by special adhesive stamps)	1	10	0

For Court fees and expenses, 15*s.*

Non-Contentious Business.

Estate Duty.

(Under sect. 17, Finance Act, 1894.)

Payable where death occurred after 1st August, 1894.

Where the net principal value of the estate—					*Rate per cent.*
Exceeds	£100	and does not exceed		£500.....	£1
,,	500	,,	,,	1,000.....	2
,,	1,000	,,	,,	10,000.....	3
,,	10,000	,,	,,	25,000.....	4
,,	25,000	,,	,,	50,000.....	4½
,,	50,000	,,	,,	75,000.....	5
,,	75,000	,,	,,	100,000.....	5½
,,	100,000	,,	,,	150,000.....	6
,,	150,000	,,	,,	250,000.....	6½
,,	250,000	,,	,,	500,000.....	7
,,	500,000	,,	,,	1,000,000.....	7½
,,	1,000,000	.....			8

Small Estates.

(Under sect. 16, Finance Act, 1894.)

Where the gross value of the real and personal estate, exclusive of property settled otherwise than by the will of the deceased—

					Fixed Duty.		
					£	*s.*	*d.*
Exceeds	£100	and does not exceed		£300.....	1	10	0
,,	300	,,	,,	500.....	2	10	0

For Court fees and expenses, 15*s.*

Non-Contentious Business.

FORMS

IN USE IN THE PRINCIPAL PROBATE REGISTRY

IN NON-CONTENTIOUS PRACTICE

AND IN THE

NOTATION DEPARTMENT.

No. 1.—*Oath for Executor.*

Extracted by ,
Solicitor .

In the High Court of Justice. Probate, Divorce, and Admiralty Division.

(Probate.) The Principal Registry.

In the estate of deceased.

(1) make oath (2) and say, that believe the paper writing hereto annexed, and marked by to contain the true and original last will and testament (3) of the said of (4) formerly of deceased; who died on the day of , 1 , at (5) ; that (6) of the said deceased and execut named in the said will ; that will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof, whenever required by law so to do; and that the gross value of the said estate amounts to £ (7) and no more, to the best of knowledge, information and belief.

Sworn on the day of , 190 ,
Before me,
A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

Power reserved to .

(1) "I" or "We." Insert the names, residences and titles or additions of the deponents.

(2) Or "do solemnly and sincerely affirm."

(3) Insert codicil or codicils, if any.

(4) Or "formerly of," &c., "but late of," &c.

(5) Insert place of death, or set forth the reason why the same cannot be furnished.

(6) Insert here the relationship (if any) of the executors to the deceased. Each testamentary paper to be marked by each party sworn, and by the person administering the oath.

(7) If deceased died on or since 1st January, 1898, insert the value of the real and personal estate. If the death was before 1898, insert the value of the personal estate only.

FORMS OF JURAT.

Non-Contentious Business.

If one deponent only—
"Sworn at on the ," &c.
If more than one deponent—
"Sworn by the said and at on the ," &c.
If an affirmation—
"I do solemnly, sincerely, and truly declare and affirm."

No. 2.—*Oath for Administrator, with Will.*

Extracted by ,
Solicitor .

In the High Court of Justice. Probate, Divorce and Admiralty Division.
(Probate.) The Principal Registry.
In the estate of deceased.

(1) make oath (2) and say, that believe the paper writing hereunto annexed, and marked by to contain the true and original last will and testament of of (3) formerly of deceased; who died on the day of 190 , at (4) and that (5) of the said deceased; and that will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; and that will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof, whenever required by law so to do; and that the gross value of the said estate amounts to £(6) and no more, to the best of knowledge, information and belief.

Sworn by on the day of 190 ,
Before me,
A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

(1) Insert the names, residences and titles or professions of the parties applying for administration with the will annexed.
(2) Or "do solemnly and sincerely affirm."
(3) Or "formerly of," &c., "but late of," &c. Each testamentary paper to be marked by each party sworn, and by the person administering the oath.
(4) Insert the place of death, or set forth the reason why the same cannot be furnished, and state the manner in which all persons having a prior right are cleared off.
(5) Here state the capacity in which the parties apply for administration with the will annexed.
(6) Insert gross amount of estate as shown by Inland Revenue affidavit. If deceased died on or since 1st January, 1898, insert the value of the real and personal estate. If the death was before 1898, insert the value of the personal estate only.

FORMS OF JURAT.

If one deponent only—
"Sworn at on the ," &c.
If more than one deponent—
"Sworn by the said and at on the ," &c.
If an affirmation—
"I do solemnly, sincerely, and truly declare and affirm."

Non-Contentious Business.

No. 3.—*Oath for Administrators with the Will, de bonis non.*

Name of solicitor ,
Address .

In the High Court of Justice. Probate, Divorce and Admiralty Division.
The Registry.

In the estate of deceased.

(1) (2) make oath and say, that believe the paper writing hereto annexed and marked by to contain (3) last will and testament of of formerly of deceased; who died on the day of 190 , at and that in the month of , 190 , (4) was [*or* were] granted at the of this Court to who for some time intermeddled in the estate for and in respect of which the said grant was made and died on the day of 190 , leaving part thereof unadministered; that (5) that (6) of the said deceased; that will administer, according to law, all the unadministered estate, which by law devolves to and vests in the personal representative of the said deceased; that will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the gross value of the said unadministered estate amounts to £ (7) and no more, to the best of knowledge, information and belief.

Sworn at this day of 190 ,
Before me,
A Commissioner for Oaths.

(1) "I" or "We." Insert the names, residences and titles, professions, or additions of the deponents.

(2) In case of affirmation the form prescribed by Act of Parliament must be used.

(3) If deponent swears upon a sealed copy of the will, then insert the words "a true and official copy." If upon the "grant," the words "a true copy of the" should appear.

(4) Here recite former grant or grants.

(5) If the previous grant was a probate, state here whether the executor died intestate or otherwise.

(6) Here state the character in which the deponent applies for the grant.

(7) If the deceased died on or since 1st January, 1898, insert the value of the real and personal estate. If the death was before 1898, insert the value of the personal estate only.

Non-Contentious Business.

No. 4.—*Oath of an Attorney of an Executor (Administration with Will).*

Extracted by , Solicitor .

In the High Court of Justice. Probate, Divorce, and Admiralty Division.

(Probate.) The Principal Registry.

In the estate of deceased.

I (1) (2) make oath, and say that of (3) deceased died on the day of , 190 , at (4) having made and duly executed h last will and testament, bearing date the day of , 1 (5) and thereof appointed (6) execut , who now reside at .

And I further make oath (2), and say that I am the lawfully appointed attorney of the said (6) , as in and by a letter or power of attorney under the hand and seal of the said (6) will more fully appear.

And I further make oath (2), and say that I believe the (7) writing hereto annexed and marked by me to contain (8) last will and testament of the said deceased; that I will faithfully administer, according to law, all the estate which by law devolves to and vests in the personal representative of the said deceased for the use and benefit of the said (9) and until (10) he shall duly apply for and obtain probate of the said will (11) to be granted to (12) ; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate amounts to (13) £ and no more to the best of knowledge, information and belief.

Sworn by the above-named at on the day of , 190 ,

Before me,
A Commissioner for Oaths.

(1) Insert the names, postal addresses, and status or professions of the attorney making the oath.
(2) Or "solemnly and sincerely affirm."
(3) Or "of but formerly of," if so.
(4) Insert place of death, or set forth the reason why the same cannot be furnished.
(5) If there are codicils, the dates should also be given.
(6) Insert executors' names.
(7) "Paper" or "parchment."
(8) "The true and original" or "a true and official copy of the" or as the case may be.
(9) Insert executors' names.
(10) "He," "she," or "they."
(11) "And codicil," if so.
(12) "Him," "her," or "them."
(13) If deceased died on or since 1st January, 1898, insert the value of the real and personal estate. If the death was before 1898, insert the value of the personal estate only.

Non-Contentious Business.

No. 5.—*Power of Attorney to take Administration, with Will annexed.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of , deceased.

WHEREAS (1) late of (2) deceased, died on the day of , 190 , at , having made his last will and testament bearing date the day of , 1 , (3) and thereof appointed (4) . I am the (5) And whereas I the said am now residing at .

Now, I the said of do hereby nominate and appoint my lawful attorney for me and on my behalf to apply to the Probate, Divorce and Admiralty Division of his Majesty's High Court of Justice in England and obtain letters of administration, with the will annexed, of the estate which by law devolves to and vests in the personal representative of the said deceased to be granted to him for my use and benefit and until I shall duly apply for and obtain probate of the will of the said deceased to be granted to me, and I hereby promise to ratify, allow, and confirm whatsoever my said attorney shall lawfully do or cause to be lawfully done in the premises by virtue of these presents. In witness whereof I have hereunto set my hand and seal at this day of , 190 .

Signed, sealed and delivered by the said in the presence of (6) . (L.S.)

(1) Insert names, residence and title, profession, business or addition of the deceased.

(2) Or "formerly of," &c., "but late of," &c.

(3) Insert codicil or codicils, if any, with date.

(4) Insert all the executors named in the will or codicil; if more than one, show how the other executors have been cleared off, either by death or renunciation.

(5) "Sole executor," or "the surviving executor," or "executor according to the tenor thereof," as the case may be.

(6) One disinterested witness is necessary, who need not occupy any official position.

No. 6.—*Oath for Double Probate.*

Name of solicitor .
Address .

In the High Court of Justice. Probate, Divorce and Admiralty Division.

The Registry.

In the estate of , deceased.

(1) (2) make oath and say, that believe the paper writing hereto annexed and marked by to contain (3) last will and testament of of formerly of , deceased, who died on the at that in the month of , 1 , probate of the said will was granted at (4) to of the executors named in the said will ; power being

reserved of making the like grant to the other executor therein named; That (5) executor named in the said will , and that will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; and that will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate now unadministered amounts to £(6) and no more, to the best of knowledge, information and belief.

Sworn this day of , 190 .

Before me,

A Commissioner for Oaths.

(1) Insert the names, residences, and titles or additions of the deponents.
(2) In case of affirmation, insert form of affirmation prescribed by Act of Parliament.
(3) "The true and original," or "a true and official copy of the."
(4) "The Principal Probate Registry" of this Court, or "the District Probate Registry of this Court at ," or as the case may be.
(5) "I am the other," or "one of the other," or "the now surviving."
(6) If deceased died on or since 1st January, 1898, insert the value of the real and personal estate. If the death was before 1898, insert the value of the personal estate only.

No. 7.—*Affidavit as to Domicile.*

Affidavit as to British Status of a Testator to prove his Will good under one of the provisions of 24 & 25 *Vict. c.* 114.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) Registry.

In the estate of deceased.

I, (1) of make oath and say as follows:

1. That I am (2) named in the last will and testament of of formerly of deceased, now hereunto annexed, bearing date the day of 1 .

2. That the said (3) deceased, was a British subject.

3. That the said will was made at within [*or* out of] the United Kingdom.

4. That the said deceased was born of English parents at and his domicile of origin was English.

Sworn by the above-named deponent at day of 190 .

Before me,

A Commissioner for Oaths.

(1) Names, residence and description of deponent.
(2) One of the executors, or the sole executor.
(3) The place where the will was made must be stated and the form can be altered to meet the facts.

If the deponent is an attesting witness to the will, rule 57 non-contentious applies to this affidavit.

Non-Contentious Business.

No. 8.—*Renunciation of Probate.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of deceased.

WHEREAS late of in the county of deceased, died on the day of one thousand nine hundred at having made and duly executed h last will and testament (1) bearing date the day of one thousand nine hundred , and thereof appointed executor.

Now the said do hereby declare that have not intermeddled in the estate which by law devolves to and vests in the personal representative of the said deceased and will not hereafter intermeddle therein, with intent to defraud creditors; and do hereby renounce all right and title to the probate and execution of the said will.

Signed by the said this day of 190 , in the presence of .

(1) If there be codicils, their dates should also be stated.

No. 9.—*Renunciation of Administration with the Will annexed.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of deceased.

WHEREAS late of deceased, died on the day of One thousand nine hundred and at , having made and duly executed h last will and testament (1), bearing date the day of One thousand hundred , and thereof appointed executor.

Now the said do hereby renounce all right and title to letters of administration with the said will (2) annexed of the estate which by law devolves to and vests in the personal representative of the said deceased.

Signed by the said this day of 190 in the presence of .

(1) If there be codicils, their dates should also be stated.
(2) And codicils, if any.

No. 10.—*Affidavit of a Marksman.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of deceased.

I make oath (1) that I am one of the subscribing witnesses to the last will and testament of the said late of

deceased; the said being now hereunto annexed, bearing date the day of One thousand hundred and , and that the said testat executed the said on the day of the date thereof, by (2) at the foot or end thereof (3) , as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, of us being present at the same time, and we thereupon attested and subscribed the said in the presence of the said testat . And I further make oath that the said was read over to the testat before its execution, when appeared fully to understand the same.

Sworn at this day of , 190 .
Before me,
A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

(1) Or "being one of the people called Quakers" (where such is the case), "do solemnly, sincerely, and truly declare and affirm," that, &c.
(2) "Signing h name," or "making h mark."
(3) Or "in the testimonium clause thereof," or "in the attestation clause thereto," as the case may be.

N.B.—If the signature is in the testimonium clause or attestation clause, insert "meaning and intending the same for the final signature to his will."

No. 11.—*Affidavit of Attesting Witness to Will or Codicil.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.
(Probate.) The Registry.
In the estate of (1) deceased.
make oath (2) that I am one of the subscribing witnesses to the last will and testament of the said late of deceased, the said being now hereunto annexed, bearing date the day of one thousand hundred , and that the said testat (3) executed the said on the day of the date thereof, by at the foot or end thereof (4) as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, of us being present at the same time, and we thereupon attested and subscribed the said in the presence of the said testat

Sworn at this day of 190 .
Before me,

(1) Insert names, residence, and title, profession, business or addition of the deponents.
(2) Or, "being one of the people called Quakers" (where such is the case), "do solemnly, sincerely, and truly declare and affirm" that, &c.
(3) "Signing h name ," or "making h mark ."
(4) Or, "in the testimonium clause thereof," or "in the attestation clause thereto," as the case may be.

N.B.—If the signature is in the testimonium clause or attestation clause, insert "meaning and intending the same for his final signature to his will."

Non-Contentious Business.

No. 12.—*Affidavit as to Alterations and Interlineations.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) Registry.

In the estate of deceased.

I, of make oath and say that I am one of the subscribing witnesses to the (1) last will and testament of late of deceased, the said (2) being now hereunto annexed, bearing date the day of , 1 . And I further make oath and say that I have carefully perused and inspected the said (3) and have particularly observed . And I further make oath and say that the said testat executed the said (3) on the day of the date thereof, by signing h name (4) as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said in the presence of the said testat . And I further make oath and say that the said recited (5) were written and made in the said (6) previously to the execution thereof.

Sworn on the day of , 190 .

Before me,

A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

(1) Or codicil to the.

(2) Will or codicil.

The words " " interlined between the and lines of the first side or page of the said will, the name " " interlined between the and lines of the said first side or page the words and figures " " struck through in ink in the line of the second side or page of the said will, and the word " " written upon an erasure in the line of the said second side or page (or, as the case may be, taking care to describe accurately the various interlineations, alterations, obliterations, or erasures, in the order in which they appear in the document).

(3) Will or codicil.

(4) At the foot or end thereof, or " in the testimonium clause thereof," or " in the attestation clause thereto " (or as the case may be).

(5) Interlineations, alterations, obliterations or erasures (as the case may be).

(6) Will or codicil.

FORMS OF JURAT.

If one deponent only—

" Sworn at on the ," &c.

If more than one deponent—

" Sworn by the said and at on the ," &c.

Non-Contentious Business.

No. 13.—*Affidavit of Handwriting.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) Registry.

In the estate of deceased.

I, of in the county of make oath that I knew and was well acquainted with late of in the county of deceased, who died on the day of 19 , at and had at the time of h death a fixed place of abode at within the for many years before, and down to the time of h death, and that during such period I have frequently seen h write and also subscribe h name to writings, whereby I have become well acquainted with h manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed purporting to be and contain the last will and testament of the said deceased bearing date beginning thus " ending thus " and being subscribed thus " I further make oath, that I verily and in my conscience believe the whole body, series, and contents of the said will, together with the names subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said deceased.

Sworn at on the day of 19

Before me,

A Commissioner to Administer Oaths in the Supreme Court of Judicature in England.

No. 14.—*Affidavit of Plight and Condition of Finding.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of deceased.

make oath (1) that , execut named in the paper writing now hereunto annexed purporting to be and contain the last will and testament of late of in the county of deceased, who died on the day of at , the said will bearing date the day of , beginning thus " , ending thus " and being subscribed thus " and having viewed and perused the said will and particularly observed that lastly make oath (3) that the same is now in all respects in the same state, plight, and condition as when found (4).

On the day of One thousand nine hundred and the said duly sworn to the truth of this affidavit.

Before me,

(1) Or "solemnly affirm."

(2) Here recite the finding of the will, and the various obliterations, interlineations, erasures, and alterations (if any), and the general plight and condition of the will or any other matters requiring to be accounted for, and clearly trace the will from the possession of the deceased in his lifetime up to the time of making this affidavit.

(3) Or "affirm."

(4) Or as the case may be.

Non-Contentious Business.

No. 15.—*Affidavit of Search.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) Registry.

In the estate of deceased.

I, of make oath (1) that I am (2) named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of late of deceased, who died on the day of in the year 19 , at the said will beginning thus " ending thus " (3) and being thus subscribed " And referring particularly to the fact that (4) I further make oath that I have made inquiry of the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept h papers of moment and concern, and in h depositories, in order to ascertain whether h had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath that I verily believe the said deceased died without having left any will, codicil, or testamentary paper whatever other than the said will by me hereinbefore deposed of.

Sworn on the day of 190 .

Before me,
A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

(1) Or " solemnly, sincerely, and truly declare and affirm."
(2) " The executor " or " one of the executors, " as the case may be.
(3) " In witness," &c., or as the case may be.
(4) The blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or* that the said will is without date, or as the case may be.]

No. 16.—*Oath for Administrators.*

Extracted by .
Solicitor .

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Principal Registry.

In the estate of , deceased.

(1) make oath (2) and say, that late of (3) deceased, died on the day of , 19 , at (4) intestate, and that I am (5) that will faithfully administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that will exhibit a true and perfect inventory of the said estate, and render a just and true

account thereof whenever required by law so to do; and that the gross value of the said estate amounts to £ (6) and no more, to the best of knowledge, information and belief.

Sworn on the day of , 19 .

Before me,

A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

(1) Insert the names, residences, and titles, or professions, of the parties applying for administration.

(2) Or, "do solemnly and sincerely affirm."

(3) Or, "formerly of," &c., "but late of," &c.

(4) Insert place of death, or set forth the reason why the same cannot be furnished, and state the manner in which all persons having a prior right are cleared off, *e.g.*, "A widower," "A bachelor without parent," "A spinster," &c.

(5) Here state the capacity in which the parties apply for administration, *e.g.*—

"I am the natural and lawful son or daughter of the said deceased."

"I am the natural and lawful brother or sister of the said deceased."

"I am the natural and lawful father or mother of the said deceased."

And in all cases where applicable, add "only next of kin," or "one of the next of kin."

(6) If deceased died on or since 1st January, 1898, insert the value of the real and personal estate. If the death was before 1898, insert the value of the personal estate only.

FORMS OF JURAT.

If one deponent only—

"Sworn at on the ," &c.

If more than one deponent—

"Sworn by the said and at on the ," &c.

If an affirmation—

"I do solemnly, sincerely, and truly declare and affirm."

No. 17.—*Oath for Attorney of Administrator.*

Extracted by ,
Solicitor ,

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Principal Registry.

In the estate of deceased.

I (1) of make oath (2) and say, that of (3) in the of (4) deceased, died on the day of 1 at intestate (5) who is now residing at in the of that (6) the lawful attorney of the said (7) and that will faithfully administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased for the use and benefit of the said (7) and until he shall duly apply for and obtain

Non-Contentious Business.

letters of administration of the said estate of the said deceased to be granted to h ; that will exhibit a true and perfect inventory of all and singular the said estate and render a just and true account thereof whenever required by law so to do, and that the gross value of the said estate of the said deceased amounts to £ (8) and no more to the best of knowledge, information and belief.

Sworn by the above-named at on the day of 190 ,

Before me,

A Commissioner for Oaths.

(1) Insert name, postal address and status or profession of deponent, commencing "I" or "We."

(2) Or "solemnly and sincerely affirm."

(3) Or "of but formerly of," if so.

(4) Add status or profession after address.

(5) "Leaving A. B. his lawful widow and relict," or "a spinster leaving surviving her A. B., her natural and lawful father and next of kin," or "C. D., her natural and lawful mother and only next of kin," or "a bachelor without parent leaving surviving him A. B., his natural and lawful brother and only (*or* one of his) next of kin," or as the case may be.

(6) "I am" or "we are."

(7) Insert name of the grantor of power of attorney.

(8) If deceased died on or since 1st January, 1898, insert the value of the real and personal estate. If the death was before 1898, insert the value of the personal estate only:—Net £ ; duty and interest £ ; rate per cent.

No. 18.—*Election by Minors of a Guardian.*

Extracted by ,
Solicitor .

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of deceased.

WHEREAS (1) late of in the county of deceased died on or about the day of one thousand at intestate, a (2) leaving (3) .

Now , the said do hereby make choice of and elect (4) (1) of in the county of .

In witness whereof (5) have hereunto set hand this day of One thousand nine hundred .

Signed by the within-named in the presence of .

(1) Name, address, and description.

(2) "Widower," or as the case may be.

(3) Leaving C. D., E. F., and G. H., his natural and lawful children and only next of kin, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years

only, and the said G. H. being an infant of the age of six years only (or as the case may be).

(4) My, or our, natural and lawful grandfather (or grandmother) and my, or our, only (or one of my, or our) next of kin—if living; or my, or our, lawful uncle, or aunt, and my, or our, only (or, and one of my, or our) next of kin to be my, or our, curator or guardian, for the purpose of his, or her, obtaining letters of administration of the estate of the said A. B., deceased, to be granted to him, or her, for my, or our, use and benefit, and until I or one of us attain the age of twenty-one years, or for the purpose of renouncing for me, or us, and on my, or our, behalf, all my, or our, right, title, and interest to and in the letters of administration, &c. (as the case may be).

(5) One disinterested witness is sufficient.

No. 19.—*Oath of Guardian Administering for the use of a Minor.*

Extracted by , Solicitor .

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of deceased.

make oath (1) and say, that of (2) deceased, died on the day of 1 , at (3) , intestate (4) leaving (5) h natural and lawful and only child and only next of kin, who now in minority, (6) to wit, the said (7) of the age of years and upwards, and the said of the age of years and upwards, but severally (8) under the age of twenty-one years. That no testamentary guardian, or guardian by the Chancery Division of the High Court of Justice or other lawful guardian has been appointed.

And further make oath and say that (9) the lawful (10) and (11) next of kin of the said (12) , and that the said minor ha by an instrument in writing under hand bearing date the day of 1 , elected or chosen (13) to be curator or guardian for the purpose of taking letters of administration of all the estate which by law devolves to and vests in the personal representative of the said deceased for (14) the use and benefit and until (16) shall attain the age of twenty-one years. And further make oath and say that will administer according to law the said estate of the said deceased, for the use and benefit of the said minor (15) until (16) shall attain the age of twenty-one years; and that will exhibit a true and perfect inventory of all the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ (17) and no more, to the best of knowledge, information, and belief.

Sworn by the above-named at this day of , 190 .

Before me,

A Commissioner for Oaths.

Non-Contentious Business.

(1) Insert the names, postal addresses, and status or professions of the parties applying for administration, commencing "I" or "we," "of," "make oath and say," or "do solemnly and sincerely affirm."
(2) Or "of but formerly of."
(3) Insert place of death, or set forth the reason why the same cannot be furnished.
(4) "A widower," or "widow," or as the case may be.
(5) Insert the full names of each child, and give the status of each daughter.
(6) "And infancy," if so.
(7) State the name and age of each child separately.
(8) "Severally," if so.
(9) "I am," or "we are."
(10) State deponent's relationship to the minors.
(11) "One of the," or "only."
(12) Full names of all the children.
(13) "Me," or "us."
(14) "Their use and benefit," or "the use and benefit of the said minors and infant."
(15) "And infant," if so.
(16) "He," "she," or "one of them," as the case may be.
(17) If deceased died on or since 1st January, 1898, insert the value of the real and personal estate. If the death was before 1898, insert the value of the personal estate only.

No. 20.—*Power of Attorney to take Administration.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.
(Probate.) The Registry.

In the estate of deceased.

WHEREAS (1) late of deceased, died on the day of , 1 , at intestate (2) and that I am (3) . And whereas I the said am now residing at .

Now, I the said of do hereby nominate and appoint my lawful attorney for me and on my behalf to apply to the Probate Division of his Majesty's High Court of Justice in England and obtain letters of administration of all the estate which by law devolves to and vests in the personal representative of the said deceased to be granted to him for my use and benefit and until I shall duly apply for and obtain letters of administration of the said estate of the said deceased to be granted to me, and I hereby promise to ratify, allow, and confirm whatsoever my said attorney shall lawfully do or cause to be lawfully done in the premises by virtue of these presents. In witness whereof I have hereunto set my hand and seal at this day of , 19 .

Signed, sealed and delivered by the said in the presence of * [L.S.]

(1) Insert names, residence and title, profession, business or addition of the deceased.

(2) Here state the manner in which all persons having a prior right are cleared off, *e.g.*—
"A widower."
"A bachelor without parent."
"A spinster," &c.

(3) Here state the capacity in which the parties apply for administration, *e.g.*—
"I am the natural and lawful son or daughter of the said deceased."
"I am the natural and lawful brother or sister of the said deceased."
"I am the natural and lawful father or mother of the said deceased."
And in all cases where applicable, add "only next of kin," or "one of the next of kin."

* One disinterested witness is necessary, who need not occupy any official position.

No. 21.—*Oath for Administrators de Bonis non.*

Name of solicitor .
Address .

In the High Court of Justice. Probate, Divorce and Admiralty Division.

The Registry.

In the estate of deceased.

(1) make oath, (2) and say that of deceased died on the day of 1 , at (3) and intestate; that in the month of 1 , letters of administration of all the estate which by law devolves to and vests in the personal representative of the said deceased were granted at to who for some time intermeddled in the said estate and died on the day of 1 , leaving part thereof unadministered. That (4) that will administer according to law all the said estate left unadministered as aforesaid; that will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate left unadministered as aforesaid amounts to the sum of £ (5) and no more, to the best of knowledge, information and belief.

Sworn at this day of 190
Before me,
A Commissioner for Oaths.

(1) "I" or "we." Insert the names, residences and titles, or additions of the deponents.

(2) In case of affirmation, insert form of affirmation prescribed by Act of Parliament.

(3) Here state the condition of deceased as appears by the former grant, *e.g.* "a widower," "a bachelor," as the case may be.

(4) Here state the kindred, or otherwise show the right of the applicant to grant.

(5) If deceased died on or since 1st January, 1898, insert the value of the real and personal estate unadministered. If the death was before 1898, insert the value of the personal estate only.

Non-Contentious Business.

No. 22.—*Administration Bond.*

KNOW ALL MEN by these presents that we are jointly and severally bound unto , the President of the Probate, Divorce and Admiralty Division of his Majesty's High Court of Justice, in the sum of (1) pounds of good and lawful money of Great Britain, to be paid to the said (2) or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves, and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the day of in the year of our Lord One thousand nine hundred and .

THE CONDITION of this obligation is such, that if the above-named (3) , the , of (4) , late of , deceased, who died on the day of One thousand nine hundred and , and the intended administrat with the will of all the estate which by law devolves to and vests in the personal representative of the said deceased (5) do when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all the said estate which has or shall come to hands, possession, or knowledge, and the same so made do exhibit, or cause to be exhibited, into the Principal Probate Registry of the said Division, whenever required by law so to do, and the said estate , do well and truly administer according to law. And further do make, or cause to be made, a true and just account of said administration, when shall be thereunto lawfully required, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the within-named and in the presence of .

(1) The stamp duty hereon is 5*s*. if the estate exceeds 100*l*. No duty is payable if the estate does not exceed that sum.

(2) If the deceased died on or since 1st January, 1898, the penalty is double the sum of the gross principal value of the personal estate and the gross annual value of the real estate.

If the death was before 1898, the penalty is double the personal estate only.

(3) Here state the character in which the party takes the grant.

(4) Here insert the names and address of the deceased.

(5) Insert "left unadministered" (if so).

No. 23.—*Administration Bond.*

KNOW ALL MEN by these presents, that we are jointly and severally bound unto the president of the Probate, Divorce and Admiralty Division of his Majesty's High Court of Justice, in the sum of (1) pounds of good and lawful money of Great Britain, to be paid to the said or to the president of the said Division for the time being, for which payment well and truly to be made we bind ourselves, and each of us, for the whole, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated the day of in the year of our Lord one thousand nine hundred and .

Non-Contentious Business.

THE CONDITION of this obligation is such, that if the above named (2) of (3) of deceased, who died on the day of one thousand nine hundred and and the intended administrat of all the estate which by law devolves to and vests in the personal representative of the said deceased (4) do when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of the said estate which has or shall come to hands, possession, or knowledge, or into the hands or possession of any other person for and the same so made do exhibit, or cause to be exhibited, into the Principal Probate Registry of his Majesty's High Court of Justice, whenever required by law so to do. And the said estate , do well and truly administer according to law: And further do make, or cause to be made, a just and true account of said administration, whenever required by law so to do. And if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors or other persons therein named do exhibit the same in the said Division of the said Court, making request to have it allowed and approved accordingly, if the said intended administrat being thereunto required, do render and deliver the letters of administration (approbation of such testament being first had and made) into the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered by the above named and in the presence of .

(1) If the deceased died on or since 1st January, 1898, the penalty is double the sum of the gross principal value of the personal estate and the gross annual value of the real estate.

If the death was before 1898, the penalty is double the personal estate only.

(2) Here state the character in which the party takes the grant.

(3) Here insert the names and address of the deceased.

(4) Insert "left unadministered" (if so).

No. 25.—*Declaration as to Value of Estate.*

Name of solicitor .
Address .

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of , deceased.

A true declaration of all the estate which by law devolves to and vests in the personal representative of of deceased, who died on the day of , 1 , at which has since h death come to the hands, possession or knowledge of the intended administrat (1) of the said estate made and ex-

Non-Contentious Business.

hibited upon and by virtue of the corporal oath of the said intended administrat as follows, to wit:—

This declarant declares the said estate to be as follows:—(2)

Personal Property.	£	s.	d.
Cash in the house			
,, at bankers			
Household goods, furniture, plate, linen, china, jewelry, &c., valued by of , licensed appraiser.			
Policy of insurance, viz.:—			
Leasehold property:			
Description			
Years unexpired			
Gross rents			
Ground rent			
Outgoings paid by lessee.....			
Value of property			
Other personal property not comprised under foregoing heads, viz.:—			
Real Property.			
Total.....£			

This declarant further declares that no estate devolving to or vesting as aforesaid in the personal representative of the said deceased has at any time since h death come to the hands, possession or knowledge of this declarant, save as is hereinbefore set forth.

On the day of , 190 , the said was duly sworn to the truth of the above declaration at .

Before me,
A Commissioner for Oaths.

(1) "With the will" (if there be one), or, "solemn affirmation."
(2) The details of the estate are to be entered here, and the value inserted opposite to each particular.

No. 26.—*Renunciation of Administration.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The Registry.

In the estate of deceased.

WHEREAS late of in the county of deceased, died on the day of One thousand hundred at intestate (1) leaving me (2) .

Now the said do hereby renounce all right and title to letters of administration of the estate which by law devolves to and vests in the personal representative of the said deceased.

Signed by the said this day of , 190 , in the presence of .

(1) A widower (or as the case may be).

(2) His natural, lawful, and only child (as the case may be). In all cases where applicable add "only next of kin," or "one of the next of kin."

No. 27.—*Certificate of Reason of Delay.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

In the estate of deceased.

I (1) of in the county of (2) the party applying for (3) the said late of (4) deceased, do hereby certify that the reason why I (5) have not sooner applied for the said (6) is that the only property the deceased died possessed of consisted of (7) and that the grant is required for no other purpose or property whatever.

Dated the day of 190 (8).

We believe the above to be true, (9) (10).

(1) Insert name, address and description.

(2) Or, the solicitor for.

(3) "Letters of administration of the estate of" or, "probate of the will of," or, "letters of administration, with the will annexed, of the estate of ."

(4) Same description as in oath.

(5) Or the party applying.

(6) Describe the grant.

(7) Here state full particulars of property as shown by Inland Revenue affidavit; if under a will please state when and where the same was proved.

(8) To be signed by the party applying for the grant if he or she certifies.

(9) Omit this if the solicitor alone gives the certificate.

(10) To be signed by the practitioner extracting the grant if the party certifies.

N.B.—It is not absolutely necessary that both the party applying and the solicitor should join in this certificate. The solicitor extracting the grant may alone give the certificate if the facts are within his knowledge.

Non-Contentious Business.

No. 28.—*Justification of Sureties.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) Registry.

In the estate of deceased.

We (1) jointly and severally make oath that we are the proposed sureties on behalf of the intended administrator of all the estate which by law devolves to and vests in the personal representative of the said late of deceased, in the penal sum of pounds, for his faithful administration of the said estate of the said deceased; and I the said for myself, make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds; and I the said for myself, make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Sworn by at on the day of , 190 .

Before me,

A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

(1) Insert the names, residences and titles or professions of the persons making the affidavit.

No. 29.—*Affidavit to lead Certificate that Estate in Ireland covered by Bond given.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

The Principal Probate Registry.

In the estate of deceased.

I, of make oath and say as follows:—

That of deceased, died on the day of , 19 .

That on the day of , 19 , letters of administration of the estate of the said deceased were granted to me by the High Court of Justice at the Principal Probate Registry thereof:

That the gross value of the estate in the United Kingdom in respect of which the grant was made was then sworn to be £ :

That no additional estate has since come to my knowledge:

That part of the said estate amounting to £ (further particulars of which are set forth in the Schedule hereto annexed) is in Ireland.

Sworn at this day of 1 .

Before me,

A Commissioner for Oaths.

SCHEDULE.

(*To be signed by the Deponent.*)

Non-Contentious Business.

FORMS

USED IN THE

NOTATION DEPARTMENT.

No. 1.—*Increase of Estate and Further Security—Affidavit to lead Certificate.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

The Principal Probate Registry.

In the estate of deceased.

I, of make oath, and say as follows:—

That on the day of , 19 , letters of administration of the estate of of deceased, were granted to me by the High Court of Justice at the Principal Probate Registry thereof.

That the gross value of the said estate in the United Kingdom was then sworn to amount to £ .

That I have since discovered that the value of the said estate exceeds that amount; and that the true gross value thereof is £ .

Sworn at this day of , 19 .

Before me,

A Commissioner for Oaths.

No. 2.—*Increase of Estate and Further Security—Certificate.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of deceased.

I, the undersigned Registrar of the Principal Probate Registry of the High Court of Justice, do hereby certify that the gross value of the estate of deceased originally sworn to amount to the sum of £ has now been sworn to amount to the sum of £ and security has been given for the increased amount.

Dated the day of , 190 .

Registrar.

Letters of administration ( ) were granted at the Principal Probate Registry on the day of .

Non Contentious Business.

No. 3.—*Estate in Ireland covered by bond given—Affidavit to lead Certificate.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

The Principal Probate Registry.

In the estate of deceased.

I, of make oath, and say as follows:—

That of deceased, died on the day of , 19 .

That on the day of , 19 , letters of administration of the estate of the said deceased were granted to me by the High Court of Justice at the Principal Probate Registry thereof.

That the gross value of the estate in the United Kingdom in respect of which the grant was made was then sworn to be £ .

That no additional estate has since come to my knowledge.

That part of the said estate amounting to £ (further particulars of which are set forth in the schedule hereto annexed) is in Ireland.

Sworn at this day of 1 ,

Before me,

A Commissioner for Oaths.

SCHEDULE.

(*To be signed by the Deponent.*)

No. 4.—*Estate in Ireland covered by bond given—Certificate.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of deceased.

I, the undersigned Registrar of the Principal Probate Registry of the High Court of Justice in England, do hereby certify that letters of administration ( ) of the estate of deceased were granted at the said Registry on the day of 190 to . And I further certify that a bond has been given to the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, in the sum of £ , the same being sufficient in amount to cover the estate of the said deceased in Ireland as well as in England.

Dated the day of 190 .

Estate, £ .

Registrar.

Non-Contentious Business.

No. 5.—*Notation of Domicile—Affidavit to lead Order.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

The Principal Probate Registry.

In the estate of deceased.

I, of , make oath and say as follows:—

That of , deceased, died on the day of , 19 , domiciled in England.

That on the day of , 19 , (1) of the said deceased was granted to me by the High Court of Justice at the Principal Probate Registry thereof.

That the gross value of the estate in the United Kingdom in respect of which the grant was made was then sworn to be £ .

That no additional estate has since come to my knowledge.

That part of the said estate amounting to £ (further particulars of which are set forth in the schedule hereto annexed) is in Scotland.

Sworn at this day of 19 .

Before me,

A Commissioner for Oaths.

The oath of one executor is sufficient.

SCHEDULE.

(*To be signed by the deponent.*)

(1) Insert here "Probate of the will" or "Administration (with will) of the estate" or "Administration of the estate," as the case may be.

No. 6.—*Order for Notation of Domicile.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of deceased.

On reading the affidavit (with schedule annexed) sworn on the day of , 190 , of the execut or the administrat named in the grant of probate of the will ( ) of or letters of administration (with will) of the estate of deceased made by this Court at the Probate Registry thereof on the day of , 190 , whereby it appeared that the said deceased died on the day of , 190 , at and was at the time of h death domiciled in England. And that all the estate which by law devolves to and vests in the personal representative of the said deceased within the United Kingdom and in

Non-Contentious Business.

respect of which the said grant was made was of the value of £ . And that a part of the said estate of the value of £ (particulars of which are set forth in the said schedule) was in Scotland the undersigned Registrar of the Principal Probate Registry on the application of the said execut or administrat ordered the said grant to be noted that "the deceased died domiciled in England."

Dated the day of , 190 .

Registrar.

No. 7.—*Order for Alteration of Grant.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of deceased.

On reading the affidavit of sworn on the day of 190 , and referring to the grant of probate of the will or letters of administration (with will) of the estate of deceased made by this Court at the Probate Registry thereof on the day of 190 , whereby it appeared that in the said grant the undersigned Registrar of the Principal Probate Registry ordered that the said grant be altered by

Dated the day of 190 .

Registrar.

No. 8.—*Revocation of Grant.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of deceased.

On reading the affidavit of sworn on the day of 190 , whereby it appeared that on the day of 190 , a grant of probate of the will and codicil or letters of administration (with will) of the estate of deceased was on the suggestion that made by this Court at the Probate Registry thereof to and that it has since been discovered that and the said grant having been voluntarily brought into and left in the said Probate Registry the undersigned Registrar of the Principal Probate Registry on the application of the said revoked the said grant made to the said as aforesaid and declared the same to be null and void to all intents and purposes in the law whatsoever.

Dated the day of 190 .

Registrar.

No. 9.—*Affidavits to lead Order Impounding Grant.*

1. By intended administrator.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

The Principal Probate Registry.

In the estate of deceased.

I, A. B. of make oath and say as follows:—

On the day of 19 , a grant of probate of the will [or letters of administration (with will) of the estate] of C. D. of deceased, were made at the Probate Registry to E. F. and that since taking upon himself such grant the said E. F. has become a person of unsound mind, and incompetent to manage himself or his affairs. I, therefore, desire that letters of administration of the said estate be granted to me for the use and benefit of the said E. F. during his lunacy and until he shall become of sound mind, and that the said grant dated the day of 19 , so made to the said E. F. may be impounded during his lunacy.

2. By doctor and nurse or attendant.

In the estate of deceased.

We, A. B. of and C. D. of make oath and say respectively as follows:—

And I the said A. B. for myself make oath and say that for the space of years now last past I have attended in my professional capacity, E. F. (who is, as I am informed and believe the natural and lawful of the said deceased), the said E. F. being a patient under the care of my fellow deponent the said C. D. at the asylum or house for the reception of lunatics at aforesaid, and that the said E. F. has been for many years and now is a lunatic and totally incapable of managing himself or his affairs or of doing any act whatever requiring thought, judgment or reflection, and is not likely soon to recover the use of his mental faculties.

And I the said C. D. for myself make oath and say that I am an attendant at the said lunatic asylum where the said E. F. is now confined, and that the said E. F. has been for upwards of years last past confined thereat, and has been under my care as a person of unsound mind, and that he is a lunatic and totally incapable of managing himself or his affairs.

Non-Contentious Business.

No. 10.—*Order for Impounding Grant.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of deceased.

On reading the affidavit of sworn on the day of , 19 , and the joint affidavit of sworn on the day of , 19 , whereby it appeared that on the day of a grant of probate of the will [or letters of administration (with will) of the estate] of deceased was made by this Court at the Probate Registry thereof to and that since taking upon himself the said grant he has become a person of unsound mind and incompetent to manage himself or his affairs and that no committee in lunacy of his estate has been appointed [or by an order in lunacy dated the day of the said was appointed committee of his estate] it is ordered by the undersigned registrar of the Principal Probate Registry that letters of administration (with the said will) of the estate of the said deceased be forthwith granted to the said for the use and benefit of the said during his lunacy and until he shall become of sound mind and that the said grant dated the day of be first brought into the said Principal Probate Registry and during such lunacy be impounded.

Dated the day of , 19 .

Registrar.

No. 11.—*Order for Filing Renunciation.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of deceased.

On reading an instrument of renunciation under the hand of and referring to the probate of the will and codicil of deceased whereby it appeared that on the day of , 190 , the said probate was granted by this Court at the Principal Probate Registry to of the executors the usual power being reserved of making the like grant to the other executor and that the said had in and by the said instrument under hand renounced the probate and execution of the said will and codicil the undersigned Registrar of the Principal Probate Registry ordered that the said instrument of renunciation be filed in the said registry and that the renunciation be noted on the record of the said probate.

Dated the day of , 190 .

Registrar.

RULES AND ORDERS

FOR HER MAJESTY'S COURT OF PROBATE,

Made under the Provisions of the Statutes 20 & 21 *Vict. c.* 77, *and* 21 & 22 *Vict. c.* 95,

IN RESPECT OF

CONTENTIOUS BUSINESS.

1. All rules and orders heretofore made and issued in respect of CONTENTIOUS business shall be repealed on and after the 1st day of September, 1862, except so far as concerns any matters or things done in accordance with them prior to the said day.

2. The following rules and orders in respect of contentious business shall take effect on and after the 1st day of September, 1862.

CONTENTIOUS BUSINESS.

3. All proceedings in the Court of Probate or in the Registries thereof in respect of business not included in the Court of Probate Act, 1857, under the expression "Common Form Business," except the warning of caveats, shall be deemed to be contentious business.

Parties to Causes.

4. Executors or other parties who, previously to the passing of the Court of Probate Act, 1857, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities, and effect as heretofore.

5. Next of kin and others who, previously to the passing of the said Act, had a right to put executors or parties entitled to administration with will annexed upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs as heretofore.

6. Parties who previously to the passing of the said Act had a right to intervene in a cause may do so, with leave of the Judge or one of the Registrars, obtained by order on summons, subject to

Contentious Business.

the same limitations and the same rules with respect to costs as heretofore.

Caveats.

7. Caveats may be entered in the Principal Registry of the Court of Probate or in a District Registry thereof; if in the Principal Registry the person entering the caveat must insert the name of the deceased in the index to the caveat book.

8. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months, and then expire and be of no effect, but may be renewed from time to time.

9. Caveats shall be warned from the Principal Registry. The warning is to be served by leaving the same or a true copy thereof at the place mentioned in the caveat as the address of the person who entered it.

10. It shall be sufficient for the warning of a caveat that a Registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

11. The warning to a caveat is to state the name and interest of the party on whose behalf the same is issued, and if such person claims under a will or codicil, is also to state the date of such will or codicil, and must be accompanied by an address within three miles of the General Post Office at which any notice requiring service may be left. The form of warning will be supplied in the Registry.

12. Upon an appearance being entered in answer to the warning of a caveat, the matter shall be entered as a cause in the Court book, and the contentious business shall thereupon be held to commence, and the expenses of the entry of such caveat and the warning thereof shall, upon taxation, be considered as costs in the cause.

Citations.

13. Citations can only be extracted from the Principal Registry, and no citation is to issue under seal until an affidavit in verification of the averments it contains has been filed in the Registry.

14. When a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered and no appearance given to the warning thereof, the contentious business shall be held to commence with the extracting of a citation in the Forms Nos. 1 and 2, or in some similar form.

No caveat is required in a citation to see proceedings.

15. Before a citation is signed by the Registrar a caveat shall be entered against any grant being made in respect of the estate and effects of the deceased to which such citation relates, and notice

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thereof shall be sent to the Registrar of any district in which the deceased appears to have had a residence at the time of his death. Such caveat is to be renewed from time to time, so as to be kept in force so long as the proceedings arising from the service of the citation are pending. [This rule is not to apply to citations to exhibit an inventory, and to render an account, nor to citations to show cause why a bond should not be assigned in order to its being enforced against the sureties.]

Citations are no longer required.

16. Citations to see proceedings may be extracted from the Registry, on the application of any party to the cause.

Parchment is no longer required.

17. Every citation shall be written or printed on parchment, and the party extracting the same, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 5, to the Registry, and there deposit the præcipe, and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post Office.

18. Citations are to be served personally when that can be done, the party cited being resident in Great Britain or Ireland, but if personal service cannot be effected the direction of the Judge or Registrars as to the mode of service must be obtained. Personal service shall be effected by leaving a true copy of the citation with the party cited, and showing such party the original, if required by him so to do.

19. Citations may be served upon parties resident out of Great Britain and Ireland by the insertion of the same or of an abstract thereof, settled and signed by one of the Registrars, as an advertisement, in such of the morning and evening London newspapers, and if necessary in such local newspapers, and at such intervals as the Judge or a Registrar may direct: provided that in any case the Judge or a Registrar may direct a citation to be served personally. If the party cited be abroad, having an agent resident in England, such agent must be served with a true copy of the citation.

20. Before a party can proceed after the service of a citation an appearance must have been entered by or on behalf of the party cited, or an affidavit of personal service, and of non-appearance must, together with the citation, have been filed in the Registry, or if personal service has not been duly effected, the order of the Judge, or of one of the Registrars in his absence, founded on an affidavit, and giving leave to proceed, must have been obtained. In case the citation has been advertised, the newspapers containing the advertisement, together with the citation and an affidavit of non-appearance, must be filed in the Registry.

21. The above rules, so far as they relate to the service of cita-

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tions, are to apply to the service of all other instruments requiring personal service.

22. If contentious proceedings arise from the service of a citation, the expense of the citation and service thereof shall, upon taxation, be considered as costs in the cause.

Suits in Formâ Pauperis.

23. Any person desirous of prosecuting a suit in formâ pauperis is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.

24. No person shall be admitted to prosecute a suit in formâ pauperis without the order of the Judge; and to obtain such order, the case laid before counsel, and his opinion thereon, with an affidavit of the party, or of his or her proctor, solicitor, or attorney that the said case contains a full and true statement of all the material facts, to the best of his or her knowledge and belief, and an affidavit by the party applying that he or she is not worth 25*l.* after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made.

25. Where a pauper omits to proceed to trial, pursuant to notice, he or she may be called upon by summons to show cause why he or she should not pay costs, though he or she has not been dispaupered, and why all future proceedings should not be stayed until such costs are paid.

Appearances.

26. All appearances are to be entered in the Principal Registry in a book provided for the purpose, and kept by the clerk of the papers. The entry must set forth the interest which the person on whose behalf it is entered has in the estate and effects of the deceased.

27. The enty of the appearance of a party shall be accompanied by an address within three miles of the General Post Office (*a*).

Service of Pleadings, &c.

28. It shall be sufficient to leave all pleadings and other instruments, personal service of which is not expressly required by these rules and orders, at the address furnished as aforesaid by the plaintiff and defendant respectively.

Default.

29. In case the party cited does not appear within the time limited in the citation, the cause shall proceed in default; never-

(*a*) Now Central Hall of Royal Courts of Justice.

theless the party cited may enter an appearance at any time before a proceeding has been taken in default, or afterwards by leave of the Judge or of one of the Registrars.

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Affidavits as to Scripts.

30. In testamentary causes the plaintiff and defendant, within eight days of the entry of an appearance on the part of the defendant, are respectively to file their affidavits as to scripts, whether they have or have not any script in their possession. A Form, No. 10, is given.

31. Every script which has at any time been made by or under the direction of the testator, whether a will, codicil, draft of a will or codicil, or written instructions for the same, of which the deponent has any knowledge, is to be specified in his affidavit of scripts; and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the Registry.

32. No party to the cause, nor his proctor, solicitor, or attorney, shall be at liberty, except by leave of the Judge, or of one of the Registrars of the Principal Registry, to inspect the affidavit as to scripts, or the scripts annexed thereto, filed by any other party to the cause, until his own affidavit as to scripts shall have been filed.

The Declaration.

33. In ordinary cases it belongs to the plaintiff to deliver the declaration, and to the defendant to deliver the plea; but the party propounding the alleged last will and testament of the deceased shall, in all cases, even if defendant in the suit, deliver the declaration, and the party opposing the same deliver the plea.

34. The declaration is to be delivered to the opposite party, and a copy thereof filed in the Registry on one and the same day, and within one month from the entry of appearance by the defendant; but the party whose duty it is to bring in the declaration shall not be compelled to deliver it, or to file a copy thereof, until the expiration of eight days after the other party has filed his affidavit as to scripts.

35. In case of proving a will in solemn form of law, the party whose duty it is shall declare in the Form No. 6, or as near thereto as the circumstances of the case admit.

36. In case of proceedings in default, the plaintiff shall file his declaration in the Registry within eight days from the last day allowed in the citation for the appearance of the defendant.

Declarations are no longer in use. The practice as regards pleadings is governed by the orders in the summons for directions.

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See *supra*.

Interest of Party opposing Will.

37. In a testamentary cause after delivery of the declaration the interest of the party to whom it has been delivered cannot be disputed by the party declaring, except by leave of the Judge.

The Plea.

Pleadings are not filed in the Registry until the case is entered for trial.

38. A party desirous of pleading must deliver his plea to the other party within eight days after the service of the declaration, and file a copy thereof in the Registry on one and the same day, otherwise he will not be permitted to plead, except with the permission of the Judge, or of the Registrars of the Principal Registry in the absence of the Judge. A form of plea is given, No. 8.

Further Pleadings.

See note in Rule 33.

39. Either of the parties may, within eight days of the service upon him of the last previous pleading, give in a replication, rejoinder, sur-rejoinder, rebutter, or demurrer, as he may be advised. The form of the declaration and plea will, it is presumed, be a sufficient guide as to the form of any further pleadings.

General Rules as to Pleadings.

40. *If one party propound a will in his declaration, and the other party in his plea allege the existence of another will, each party may, with and subject to the permission of the Judge, adduce proof at the trial or hearing of the cause of the validity of the will upon which he relies.*—Repealed.

(*a*) In place of Rule 40 of the Rules and Orders in Contentious Business, and of the Form No. 8 referred to in Rule 38 of the said rules and orders, it is ordered, that—

40. If one party propounds a will or testamentary script in his declaration, and the adverse parties, or either of them, desire to propound another will or testamentary script, the adverse parties must, with their pleas, deliver to the opposite party and file in the Registry a declaration propounding such other will or testamentary script, to which the opposite party shall plead; and the form of declaration, and the pleadings and proceedings arising therefrom, shall be the same as are directed by the rules and orders of this Court in respect to the original declaration delivered and filed in the cause.

40a. The party or parties pleading to a declaration propounding a will or testamentary script shall be allowed to plead only the

(*a*) Amended and Additional Rules and Orders for her Majesty's Court of Probate in Contentious business. Dated 29th December, 1865.

pleas hereunder set forth, unless by leave of the Judge, to be obtained on summons. Contentious Business.

1. That the paper writing bearing date, &c., and alleged by the plaintiff [*or* defendant] to be the last will and testament [*or* codicil to the last will and testament] of A. B., late of, &c., deceased, was not duly executed according to the provisions of the statute 1 Vict. c. 26, in manner and form as alleged.
2. That A. B., the deceased in this cause, at the time his alleged will [*or* codicil] bears date, to wit, on the, &c. was not of sound mind, memory, and understanding.
3. That the execution of the said alleged will [*or* codicil] was obtained by the undue influence of C. D. and others acting with him.
4. That the execution of the said alleged will [*or* codicil] was obtained by the fraud of C. D. and others acting with him.
5. That the deceased at the time of the execution of the said alleged will [*or* codicil] did not know and approve of the contents thereof.

Any party pleading the last of the above pleas shall therewith (unless otherwise ordered by the Judge) deliver to the adverse parties and file in the Registry particulars in writing, stating shortly the substance of the case he intends to set up thereunder; and no defence shall be available thereunder which might have been raised under any other of the said pleas, unless such other plea be pleaded therewith.

41. In all cases the party opposing a will may, with his plea, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Prerogative Court.

42. Either party desiring to alter or amend a pleading must apply to the Court upon motion; but if the alteration or amendment required be merely verbal or in the nature of a clerical error it may be made by order upon summons. No motion is now necessary.

43. When a pleading has been ordered to be altered or amended, the time for filing the next pleading shall commence from the time of the order having been complied with.

44. If a party in any cause fail to deliver, or file a copy of the declaration, plea, or other pleading within the time specified in these rules, or within such extended time as may have been allowed, the party to whom such declaration, plea, or other

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pleading ought to have been delivered shall not be bound to receive it, and the copy of such declaration, plea, or other pleading shall not be filed, unless by direction of the Judge, or by order of the Registrars of the Principal Registry, obtained on summons. The expense of every application for such direction or order shall fall on the party who has caused the delay, unless the Judge or Registrars shall otherwise direct.

45. When in any cause a conditional order is made, the party entitled to proceed in default must, before he can take the next step, obtain an order of the Registrars, or, if required, an order of the Judge upon summons, or on motion in Court.

The Issue.

46. Within fourteen days after the delivery of the last pleading in the cause, the party who brought in the declaration is to deliver to the other parties in the cause the issue in the Form No. 11, or in a form as near thereto as the circumstances of the case will admit, but the issue is not to be filed.

The Mode of Trial.

47. The party who delivers the issue shall therewith give notice to the other parties to the cause, that, after the expiration of eight days, he intends on a day to be specified in the notice to apply to the Court to try the questions at issue before itself, either with or without a jury, or to direct an issue to be tried before a Judge of assize, as the case may be; and if he do not give such notice with the issue, or within sixteen days from the day on which the issue was delivered, the other party may give a similar notice to him. A form of notice, No. 12, is subjoined.

See chapter on Summons for Directions.

48. A copy of every such notice shall be filed in the Registry with the case for motion as to mode of trial.

49. In each case the Judge shall, after hearing the parties upon motion in Court, direct in what mode the cause shall be tried or heard.

The Record.

50. After the direction of the Judge has been obtained as to the mode in which the cause is to be tried or heard, the party who delivered the declaration shall, within eight days, deposit the record of the cause in the Registry. The record is to conclude with a statement of the mode in which the Judge has directed the cause to be tried or heard, as in the Form No. 13.

51. In default of the appearance of defendants, being parties cited, a record, as in Form No. 14, or as near thereto as can be, shall be deposited in the Registry.

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Trial by Jury.

52. If the cause be directed to be tried by a jury, the questions at issue between the parties are to be prepared by the party declaring from the record, and settled by one of the Registrars of the Principal Registry. A form is given, No. 15, and a copy of such questions so settled is to be served on all the other parties to the cause.

Questions are not now settled by the Registrars except under special circumstances.

53. After the questions have been so settled, any party in the cause shall be at liberty to apply to the Judge on summons to alter or amend the same, and his decision shall be final and binding on the parties.

Setting down the Cause for Trial or Hearing.

54. The party who has deposited the record shall set down the cause for trial or hearing, and upon the day on which he so sets it down shall give notice of his having done so to each party for whom an appearance has been entered; but if he delay setting down the cause for trial or hearing for the space of one month after the Court has directed the mode in which the questions at issue shall be tried or heard, either of the other parties may set the cause down for trial or hearing, and give a similar notice. A copy of every such notice shall be filed in the Registry; and the cause, unless the Judge shall otherwise direct, shall come on in its turn.

55. No cause is to be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the written consent of all parties to the suit, previously filed in the Registry.

Demurrer.

56. All demurrers are to be set down for hearing in the same manner as causes, and will come on in their turn with other causes to be heard by the Judge without a jury.

No demurrer allowed now.

See chapter on Pleadings.

The Hearing.

57. The hearing of the cause shall be conducted in Court, and the counsel shall address the Court, subject to the same rules and regulations as now obtain in the Courts of Common Law.

58. After the conclusion of the trial or hearing, the Registrar shall enter on the record the finding of the jury, or the decision of the Judge, in a form corresponding as near as may be with those given, Nos. 25 and 26, and shall sign the same.

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New Trial.

See chapter on New Trial.

59. An application for a new trial of an issue tried before a jury may be made to the Court by motion within fourteen days from the day on which the issue was tried if the Court be then sitting, if not, on the first motion day after the expiration of the fourteen days.

60. An application for a re-hearing of a cause heard before the Judge without a jury, and in which evidence has been given vivâ voce, may be made by motion within fourteen days from the day on which the same was heard, if the Court be then sitting, if not, on the first motion day after the expiration of the fourteen days.

Interest Causes.

61. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the Judge, adduce proof on one and the same trial of their interests respectively.

62. In interest causes the pleading of each party must show on the face of it that no other person exists having a prior interest to that of the claimant.

63. Forms of the declaration and plea in an interest cause are given, No. 7 and No. 9. (These forms are not now used.)

Proceedings by Petition.

64. Any question arising in a cause, and not being one of interest, domicile, or other matter usually brought before the Court by declaration and plea, may be brought before the Court by petition.

65. The party desiring to proceed by petition is to give notice thereof in writing to all the other parties in the cause, and such notice is to set forth the question intended to be raised for the decision of the Court, and a copy of such notice is to be filed in the Registry.

Matters formerly done by petition are now heard by summons.

66. In proceedings by petition the plaintiff shall, within eight days after he has given notice, deliver his petition to the defendant, and file a copy thereof in the Registry upon one and the same day.

67. The defendant shall, within eight days after the delivery of the petition, deliver his answer to the plaintiff, and file a copy thereof in the Registry upon one and the same day; and the same course shall be pursued with respect to the reply, rejoinder, &c., until the petition is concluded.

68. When the defendant raises the question to be heard by petition, and gives notice thereof to the plaintiff, the plaintiff shall,

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within eight days from the receipt of such notice, file a petition; otherwise the defendant shall be at liberty to do so.

69. Both plaintiff and defendant shall, within eight days from the day upon which the petition is concluded, file in the Registry such affidavits and other proofs as may be necessary in support of their several averments therein. A form of petition is given, No. 28.

Matters formerly done by petition are now heard by summons.

70. After the time for filing the affidavits and other proofs has expired, the petitioner is to set down the petition for hearing in the same manner as a cause.

Subpœnas.

Now on paper.

71. Every subpœna shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, to the registry, and there get it signed and sealed, and deposit the præcipe.

Admission of Documents.

72. Any party in a cause may call upon the other party or parties, by notice in writing in the form given, No. 20, to admit any document, saving any just exceptions: and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or hearing the Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed as costs in the cause except in cases where the omission to give the notice was, in the opinion of the Registrar, a saving of expense.

Production of Wills, &c.

73. Applications for an order for the production of papers or writings purporting to be testamentary, may be made to the Judge, by motion or by summons when a suit is pending, and by motion upon affidavit when no suit is pending. If it can be shown that a testamentary paper is in the possession, within the power, or under the control of any person, a subpœna for the production of the same may be obtained by a Registrar's order, founded on an affidavit. Forms of subpœnas applicable to these cases are given, Nos. 21 and 22, and Forms of Præcipe, Nos. 23 and 24.

Guardians to Minors.

74. A minor may elect a guardian for the purpose of carrying on, defending, or intervening in a suit, in the same manner and subject to the same rules as in respect of non-contentious business,

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and without having such guardian assigned to him; but guardians are to be assigned to infants (under the age of seven years) for the above purposes by the Judge, or by an order of one of the Registrars, founded on an affidavit to the effect required for such assignment in non-contentious business.

Pencil Writing on Will, &c.

75. When any pencil writing appears on a will, script, or other document filed in the Registry, a fac-simile copy of the will, script, or other document, or of the pages or sheets thereof, containing the pencil writing, must also be filed with those portions written in red ink which appear in pencil in the original. Such copy must be examined by an examiner in the Registry.

Inventories.

76. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased, are to be filed, unless by order of the Judge or of a Registrar.

Notices.

77. All notices required by these rules, or by the practice of the Court, are to be in writing.

Real Estate.

78. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the Judge, or to a Registrar in his absence, for an order authorizing him to cite the heir or heirs-at-law, or other person or persons having or pretending interest in such real estate, to see proceedings: and the Judge or Registrar, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, will make an order authorizing the person applying to cite the heir or heirs-at-law or other such person or persons as aforesaid: provided always, that the Judge may give any special directions as to the persons to be cited which he may think the justice of the case requires.

Receiver of Real Estate.

79. A receiver of real estate pending suit is to give bond in the form given, No. 29, or in a form as near thereto as the circumstances of the case will admit of, with two sureties, and in a penalty of such an amount as may be directed by the Judge.

Affidavits.

80. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every person making an affidavit is to be inserted therein.

81. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

82. No affidavit will be admitted in any matter depending in the Court of Probate any material part of which is written on an erasure, or in the jurat of which there is any interlineation or erasure.

83. When an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, Commissioner, or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that such party made his or her mark thereto, or wrote his or her signature thereto, in the presence of the Registrar, Commissioner, or other person before whom the affidavit was made.

84. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before the partner or clerk of his proctor, solicitor, or attorney.

85. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

86. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in Court, unless by leave of the Judge.

Appeals.

87. Application for leave to appeal against any interlocutory decree or order of the Court of Probate must be made within a month of the delivery of the decree or order appealed from, or within such extended time as the Judge shall direct, and notice of such application must be given to the party in whose favour such order or decree has been made, and filed in the Registry. A Form of Notice is given, No. 29.

See chapter on Appeals.

88. Parties may proceed to carry into effect the decision of the Court of Probate, notwithstanding any notice of appeal, or of application for leave to appeal, unless the Judge shall otherwise order; and the Judge may order the execution of his decree or order to be suspended, upon such terms as he sees fit.

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Time fixed by these Rules.

89. The Judge shall in every case in which a time is fixed by these rules for the performance of any act have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.

90. To prevent the time fixed for the performance of any act from expiring before application can be made to the Judge for an extension thereof, any one of the Registrars may, upon reasonable cause being shown, extend the time, provided that such time shall in no case be extended beyond the day upon which the Judge shall next sit in Chambers, or in Court to hear motions.

91. The time fixed in these rules for bringing in pleadings and for other proceedings shall in all cases be exclusive of Sundays, Christmas Day, and Good Friday.

Taxing Bills of Costs.

92. All bills of costs in contentious business are referred to the Registrars of the Principal Registry for taxation, and may be taxed by them without any special order for that purpose. Such bills are (unless by leave of the Judge or a Registrar) to be filed in the Registry two days at least before the day appointed for the taxation. An appointment for taxation will be made at the time of filing the bill.

93. The party who has obtained an appointment to tax his bill of costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at the same time deliver to him or them a copy of the bill to be taxed.

94. When an appointment has been made by a Registrar of the Principal Registry for taxing any bill of costs, and any of the parties to be heard on the taxation do not attend at the time appointed, the Registrar may nevertheless proceed to tax the bill, after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

95. If more than one-sixth is deducted from any bill of costs taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill.

Accounts of Administrators and Receivers pending Suit.

96. Every administrator pendente lite and receiver of real estate shall exhibit an inventory and render an account of the property of

the deceased which comes to his hands, and the accounts of every such administrator and receiver shall be referred to the Registrars of the Principal Registry for investigation and report, before the same are allowed by the Court, unless the Judge shall otherwise direct; and the foregoing rules and orders respecting the taxation of costs shall, so far as the same are applicable, be observed with respect to the investigation of such accounts, and any other accounts referred to the Registrars for examination.

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Paying Money out of Court.

97. Persons applying for payment of money out of the Registry must give forty-eight hours' notice of such application to the clerk of the papers. Such notice is to be in writing, and to set forth the day on which the money applied for was paid into the Registry—the minute entered on receiving the same—the date and particulars of the order for payment to the applicant—and if the same be in payment of costs, the date of filing the bill for taxation and of the Registrar's certificate. During the summer vacation money can only be paid out on certain days, to be fixed by the Registrars, notice whereof will be given in the Registry.

The Rules of the High Court now apply.

Summonses.

98. A summons may be taken out by any person in any matter, whether contentious or non-contentious, in which there is no rule or practice requiring a different mode of proceeding.

99. A printed form must be obtained and filled up with the object of the summons, and a proper fee stamp affixed. It must then be taken to the clerk of the papers, who will insert in the blank left in the printed form the time when the summons is to be made returnable, and get the summons signed by a Registrar.

100. The clerk of the papers is then to enter the name of the cause or matter and of the agent taking out the summons in the summons book, and return the summons (with the stamp cancelled), signed, to the applicant, who is to serve a copy on the party summoned. This copy must be served on the party summoned one clear day at least before the summons is returnable and before 7 p.m. On Saturdays the copy of the summons is to be served before 2 p.m.

See practice in chapter on Summons.

101. On the day and at the hour named in the summons the party issuing the same is to present himself with the original at the Judge's chambers.

102. Both parties will be heard by the Judge, who will make such order as he may think fit, and a note of such order will be made by the Registrar in the summons book.

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103. If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the Judge, who will thereupon make such order as he may think fit.

104. An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the Judge on that occasion.

105. If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the opposite party, must be filed in the Registry. An order will thereupon be drawn up, and delivered to the person filing such summons or copy. The clerk of the papers before giving out the order is to see that the proper stamp has been affixed to it, and is to cancel such stamp.

106. If a summons is brought to the clerk of the papers, with a consent to an order endorsed thereon, signed by the party summoned, or by his proctor, solicitor, or attorney, an order will be drawn up without the necessity of going before the Judge: provided that the order sought is, in the opinion of the Registrars, one which, under the circumstances, would be made by the Judge.

Writs of Attachment and other Writs.

Motions are only required for writ of attachment.

107. Applications for writs of attachment, and also for writs of fieri facias and of sequestration, must be made to the Judge by motion in Court.

108. Such writs, when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the Registry, with an office copy of the order, and, when approved and signed by one of the Registrars, shall be sealed with the seal of the Court, and it shall not be necessary for the Judge to sign such writs.

109. Any person in custody under a writ of attachment may apply for his or her discharge to the Judge if the Court be then sitting; if not, then to one of the Registrars, who for good cause shown shall have power to order such discharge.

Service of Notices, &c.

110. It shall be sufficient to leave all notices and copies of pleadings and other instruments which by the rules and orders of the Court are required to be given or delivered to the opposite

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parties in a cause, or to their proctors, solicitors, or attorneys, and personal service of which is not expressly required, at the address furnished, by such parties respectively.

See practice in chapter on Motions.

111. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the other parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the Registry with the case for motion, but no proof of the service of the notice will be required, unless by direction of the Judge, or of the Registrars in his absence.

112. If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded, on the application of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the Judge shall otherwise direct.

113. When it is necessary to serve personally any order or decree of the Court, the original order or decree, or an office copy thereof, under seal of the Court, must be produced to the party served, and annexed to the affidavit of service marked as an exhibit by the Commissioner or other person before whom the affidavit is sworn.

Change of Proctor, Solicitor, or Attorney.

A notice of change is now filed.

114. A party may obtain an order to change his or her proctor, solicitor or attorney upon application by summons to the Judge, or to the Registrars in his absence.

115. In case the former proctor, solicitor or attorney neglects to file his bill of costs for taxation at the time required by the order served upon him, the party may, with the sanction and by order of the Judge or of the Registrars, proceed in the cause by the new proctor, solicitor or attorney, without previous payment of such costs.

Order for the immediate Examination of a Witness.

116. Application for an order for the immediate examination of a witness who is within the jurisdiction of the Court is to be made to the Judge, or to one of the Registrars in his absence, by summons, or if on behalf of a plaintiff proceeding in default of appearance of the parties cited or warned in the cause without summons before one of the Registrars, who will direct the order to issue, or refer the application to the Judge, as he may think fit.

117. Such witness shall be examined vivâ voce, unless otherwise directed, before a person to be agreed upon by the parties in the

Contentious Business.

cause, or to be nominated by the Judge or by the Registrar to whom the application for the order is made.

118. The parties entitled to cross-examine the witness to be examined under such an order shall have four clear days' notice of the time and place appointed for the examination, unless the Judge or the Registrar to whom the application is made for the order shall direct a shorter notice to be given.

Commissions and Requisitions for Examination of Witnesses.

119. Application for a commission or requisition to examine witnesses who are out of the jurisdiction of the Court is to be made by summons, or if on behalf of a plaintiff proceeding in default of appearance without summons, before one of the Registrars, who will order such commission or requisition to issue, or refer the application to the Judge, as he may think fit.

120. A commission or requisition for examination of witnesses may be addressed to any person to be nominated and agreed upon by the parties in the cause, and approved of by one of the Registrars, or for want of agreement to be nominated by the Registrar to whom the application is made.

121. The commission or requisition is to be drawn up and prepared by the party applying for the same, and a copy thereof shall be delivered to the parties entitled to cross-examine the witnesses to be examined thereunder two clear days before such commission or requisition shall issue, under seal of the Court, and they or either of them may apply to one of the Registrars by summons to alter or amend the commission or requisition, or to insert any special provision therein, and the Registrar shall make an order on such application, or refer the matter to the Judge. Form of a commission and requisition is given in the Appendix No. 31.

122. Any of the parties to the cause may apply to one of the Registrars by summons for leave to join in a commission or requisition, and to examine witnesses thereunder; and the Registrar to whom the application is made may direct the necessary alterations to be made in the commission or requisition for that purpose, and settle the same, or refer the application to the Judge.

123. After the issuing of a summons to show cause why a party to the cause should not have leave to join in a commission or requisition, such commission or requisition shall not issue under seal without the direction of one of the Registrars.

Contentious Business.

Cases for Motion.

124. Cases for motion are to set forth the style and object of, and the names and descriptions of the parties to, the cause or proceeding before the Court; the proceedings already had in the cause, and the dates of the same; the prayer of the party on whose behalf the motion is made, and briefly, the circumstances on which it is founded.

125. If the cases tendered are deficient in any of the above particulars, the same shall not be received in the Registry without permission of one of the Registrars.

126. On depositing the case in the Registry, and giving notice of the motion, the affidavits in support of the motion, and all original documents referred to in such affidavits, or to be referred to by counsel on the hearing of the motion, must be also left in the Registry; or in case such affidavits or documents have been already filed or deposited in the Registry, the same must be searched for, looked up, and deposited with the proper clerk, in order to their being sent with the case to the Judge.

127. Copies of any affidavits or documents to be read or used in support of a motion are to be delivered to the other parties to the suit who are entitled to be heard in opposition thereto.

As to Costs.

128. In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the proctor, solicitor, or attorney of the party to whom such costs are to be paid may forthwith file his bill of costs in the Registry, and obtain an appointment for the taxation, provided that such taxation shall not take place before the time allowed for moving for a new trial or rehearing shall have expired; or, in case a rule nisi should have been granted, until the rule is disposed of, unless the Judge shall, for cause shown, direct a more speedy taxation.

Review of Taxation.

129. Application for a review of taxation is to be made to the Judge on summons.

Recovery of Costs.

130. Upon the Registrar's certificate of costs being signed, he shall at once issue an order of the Court for payment of the amount within seven days, unless a summons be taken out for a review of the taxation, in which case the order for payment shall be suspended until the summons is disposed of.

Contentious Business.

No committal now for non-payment of costs.

131. This order shall be served on the proctor, solicitor, or attorney of the party liable [or if it is desired to enforce the order by committal on the party himself], and if the costs be not paid within the seven days a writ of fieri facias or writ of sequestration or a writ of elegit shall be issued as of course in the Registry, upon an affidavit of service of the order, and non-payment.

As to Subpœnas.

132. The issuing of fresh subpœnas in each term shall be abolished, and it shall not be necessary to serve more than one subpœna upon any witness.

133. All summonses heretofore heard by the Registrars at the Principal Registry in the absence of the Judge shall hereafter be heard before one or more of the Registrars at the Principal Registry during the period appointed for the sittings of the Court at Westminster, as well as in the Judge's absence.

134. All rules and orders in respect to summonses now heard before the Judge in chambers at Westminster shall, so far as the same are applicable, be observed in respect of the summonses heard before one or more of the Registrars at the Principal Registry.

135. The Registrar before whom the summons is heard will direct such order to issue as he shall think fit, or refer the matter at once to the Judge.

136. Any person heard on the summons objecting to the order so issued under the direction of the Registrars may, subject to any order as to costs, apply to the Judge on summons to rescind or vary the same.

Contentious Business.

COSTS

TO BE ALLOWED

PROCTORS, SOLICITORS, AND ATTORNIES

PRACTISING IN THE COURT OF PROBATE

IN COURT AND CONTENTIOUS BUSINESS.

	£	s.	d.
Citation.			
Citation, including præcipe	0	7	6
Citation to see proceedings, including præcipe	0	7	6
Certificate of service	0	2	6
Service of citation, if within two miles of the place of business of the practitioner or of the person employed to effect the service	0	5	0
If beyond that distance in addition for every mile one way	0	1	0
Affidavit of service, if three folios of seventy-two words or under	0	5	0
If necessarily more than three folios, for every folio, including copy	0	1	4
In cases in which the person to be served shall avoid service, or the service shall be effected beyond the jurisdiction, except in Scotland and Ireland, such a sum to be allowed for service as the Registrar may consider reasonable under the circumstances.			
Subpœna.			
Subpœna ad testificandum, including præcipe	0	5	0
Subpœna duces tecum, or to bring in a script, if five folios of seventy-two words, or under, including præcipe	0	5	0
If necessarily exceeding five folios, for each additional folio of seventy-two words	0	1	0
Service of a subpœna. Same as citation.			
Writ.			
Writ of attachment, including præcipe	0	7	6
Writ of sequestration, including præcipe	0	7	6
Writ of fieri facias, including præcipe	0	7	6
Instructions.			
Instructions for citation, for pleadings, for interrogatories, for special affidavits, or for inventories	0	6	8
Ditto to defend suit	0	6	8
Ditto for brief, or case for hearing	0	13	4
If there are several witnesses and the brief is necessarily long an additional fee will be allowed.			

Contentious Business.

Pleadings and Copies.

	£	*s.*	*d.*
Drawing and engrossing declaration, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio ...	0	1	4
Drawing and engrossing pleas, replications, demurrers, and other pleadings, except those simply joining or taking issue, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio ...	0	1	4
Copies of declaration or other pleadings to file, at per folio of seventy-two words	0	0	4

The Issue.

Drawing the issue, if fifteen folios of seventy-two words or under, including copy	0	10	0
If exceeding fifteen folios, per folio, including copy	0	0	8

The Record.

Engrossing record to file, at per folio of seventy-two words, including parchment	0	0	6

Special Case.

For case for motion, including fair copy for the Judge ...	0	10	0
If necessarily exceeding seven folios of seventy-two words in length, for every additional folio of seventy-two words, including copy	0	1	4
For case to advise on evidence, including copy for counsel	1	0	0

If the case exceeds ten folios in length, and it is shown that it could not be used as part of the brief or case for the hearing, an additional fee will be allowed.

Drawing Instruments.

Drawing any instrument to be filed in or issued by the Registry for which no other fee is herein allowed, and for fair copy to be filed or issued, per folio of seventy-two words	0	1	4

Perusing and Abstracting.

For perusing and abstracting pleadings, testamentary papers, and exhibits of all kinds, per folio of seventy-two words	0	0	4

Briefs and Cases for Hearing.

For drawing same, per folio of seventy-two words	0	1	0
For each copy, per folio of seventy-two words	0	0	4

Maps and Plans.

For maps or plans ..... each from	1	1	0
		to	
	3	3	0
Copies of same if required ..... each from	0	10	0
		to	
	1	0	0

Contentious Business.

	£	s.	d.
Affidavits.			
Drawing affidavit:			
If five folios of seventy-two words or under, including copy for the Court or Registry	0	6	8
If above five folios, per folio including copy	0	1	4
Interrogatories.			
For drawing the same, at per folio of seventy-two words, and copy for the Court	0	1	4
Copies.			
For every plain copy of a script, exhibit, or other instrument, per folio of seventy-two words	0	0	4
If the same or any part thereof are required to be made fac simile, for the part or parts copied fac simile, in addition to the above, per folio of seventy-two words	0	0	2
All copies on parchment, per folio of seventy-two words, including the parchment	0	0	6
Collating.			
For collating any copy of a script, exhibit, or other instrument with the original, or with another copy thereof, per folio of seventy-two words, in addition to the fee for attendance	0	0	2
Notices.			
All necessary notices, if three folios or under, inclusive of copy and service	0	5	0
If necessarily exceeding three folios, for every additional folio	0	1	0
In all cases where service of a notice is necessary beyond two miles of the place of business of the practitioner, the same fee as upon the service of a citation.			
Summonses.			
Drawing summons	0	3	4
Copy of summons or order of the Judge, and service	0	5	0
Attendances.			
For attendance on and feeing counsel, when the fee is one guinea	0	3	4
When the fee exceeds one guinea and is under five guineas	0	6	8
When the fee is five guineas and upwards	0	13	4
Attendance on consultation	0	13	4
Attendance on conference	0	6	8
Attendance in pursuance of notice to admit	0	6	8
For every hour after the first	0	6	8
Attendance on trial or hearing when cause is in paper and not tried or heard, or on motion in Court	0	13	4
On trial or hearing	1	1	0
If it lasts the whole day	2	2	0

Contentious Business.

	£	s.	d.
Attendance on examination of witnesses under a commission or order—			
If in England or Wales, per diem	2	2	0
If elsewhere ,,	3	3	0
For all necessary attendances in chambers before the Judge or before a Commissioner, on counsel, in the Registry, or upon the adverse parties or practitioner, for which no other fee is herein allowed	0	6	8

Term Fees, Letters, and Messengers.

Term fee, letters, and messengers, for each term in which any business is done in Court or in chambers other than obtaining an order for taxation, or attending the taxation of bills of costs	0	15	0
For every necessary letter written to any person other than the practitioner's own client	0	3	6

Bills of Costs.

Drawing bill of costs and copy for taxation, per folio of seventy-two words	0	1	0
Copy for the adverse party, per folio of seventy-two words	0	0	4
Attendance on taxation of bill of costs	0	13	4
If necessarily above an hour, for each additional hour or part of an hour	0	6	8

If in any Court or contentious business it should become necessary for proctors, solicitors, or attorneys to transact any business for which no fee is herein specified, such fee shall be allowed to them as would be allowed for similar business done in the Courts of Common Law and Equity.

COSTS

TO BE ALLOWED

PROCTORS, SOLICITORS, AND ATTORNIES

PRACTISING IN THE COURT OF PROBATE

IN CONTENTIOUS BUSINESS

FOR THE USE OF OTHER PERSONS.

Counsel's Clerks' Fees.

Not to exceed as under:	£	s.	d.
Upon a fee to counsel under 5 guineas	0	2	6
5 guineas and under 10 guineas	0	5	0
10 guineas and under 20 guineas	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas	1	0	0
50 guineas and upwards—at per cent. on the fee paid	2	10	0
On consultations:			
Senior's clerk	0	5	0
Junior's clerk	0	2	6
On general retainer	0	10	6
On common retainer	0	2	6
On conference	0	5	0

Witnesses' Expenses.

Allowance to witnesses, including their board and lodging, as between party and party:			
Common witnesses, such as labourers, journeymen, &c. &c.:			
If resident within five miles of the General Post Office, per diem	0	5	0
If beyond that distance, per diem	0	7	6
Master tradesmen, yeomen, farmers, &c.:			
If resident within five miles of the General Post Office, per diem	0	10	0
If resident beyond that distance, per diem	0	15	0
Auctioneers and accountants:			
If resident within five miles of the General Post Office, per diem	1	1	0
If resident beyond that distance, per diem	2	2	0
Professional men, including notaries, engineers, and surveyors, &c.:			
If resident within five miles of the General Post Office, per diem	1	1	0
If resident beyond that distance, per diem	3	3	0

Contentious Business.

	£	s.	d.
Clerk to attornies or others:			
If resident within five miles of the General Post Office, per diem	0	10	6
If resident beyond that distance, per diem	1	1	0
Esquires, bankers, merchants, and gentlemen, per diem	1	1	0
Females according to station in life:			
If resident within five miles of the General Post Office, per diem, from	0	5	0
	to		
	0	10	0
If resident beyond that distance, per diem, from	0	7	6
	to		
	1	0	0
Police inspector:			
If resident within five miles of the General Post Office, per diem	0	7	6
If resident beyond that distance, per diem	0	10	0
Police constable:			
If resident within five miles of the General Post Office, per diem	0	5	0
If resident beyond that distance, per diem	0	7	6

The travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid; but in no case will there be an allowance for such expenses of more than 1*s.* per mile one way.

Commissioners of the Court.

	£	s.	d.
Commissioners of the Court for administering each oath to each deponent	0	1	6
For marking each exhibit	0	1	0

COSTS (Ord. 65, rr. 8—10).

Writs, Summonses, and Warrants.	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
Writ of summons for the commencement of any action	0	13	4	0	6	8
And for indorsement of claim, if special	0	5	0	0	5	0
Concurrent writ of summons	0	6	8	0	6	8
Renewal of a writ of summons	0	6	8	0	6	8
Notice of a writ for service in lieu of writ out of jurisdiction	0	5	0	0	4	0
Writ of inquiry	1	1	0	1	1	0
Writ of mandamus	1	1	0	0	10	0
Or per folio	0	1	4	0	1	4
Writ of subpœna ad testificandum or duces tecum	0	6	8	0	6	8
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Writ or writs of subpœna ad testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three	0	6	8	0	6	8
Writ of distringas, pursuant to statute 5 Vict. c. 5	0	13	4	0	13	4
Writ of execution, or other writ to enforce any judgment or order	0	10	0	0	7	0
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal	0	6	8	0	6	8
Notice thereof to serve on sheriff	0	5	0	0	4	0
Any writ not included in the above	0	10	0	0	7	0
These fees include all indorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.						
Summons to attend at Judges' chambers	0	6	8	0	3	0
Or if special, at taxing officer's discretion, not exceeding	1	1	0	0	13	4
Copy for the Judge, when required	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Originating summons for proceedings in chambers in the Chancery Division at taxing officer's discretion, not exceeding	1	1	0	1	1	0
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped	0	13	4	0	13	4

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
Copy for the Judge	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Indorsing same and copies under Ord. LV. r. 22	0	6	8	0	6	8
Services and Notices.						
Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, petition, order, or notice on a party who has not entered an appearance, and if not authorised to be served by post	0	5	0	0	5	0
If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom	0	1	0	0	1	0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition	0	7	0	0	7	0
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.						
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.						
Service when an appearance has been entered on the solicitor or party	0	2	6	0	2	6
Or if authorised to be served by post	0	1	6	0	1	6
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.						
In addition to the above fees, the following allowances are to be made:—						
As to writs, if exceeding two folios, for copy for service, per folio beyond such two	0	0	4	0	0	4
As to summons to attend at the Judges' chambers, for each copy to serve	0	2	0	0	1	0
Or per folio	0	0	4	0	0	4
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories	0	1	0	0	1	0
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call	0	1	0	0	1	0

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
And for drawing notice to be served on contributories or creditors of a meeting, per folio	0	1	0	0	1	0
For each copy of the last-mentioned notice to serve, per folio	0	0	4	0	0	4
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any	0	1	0	0	1	0
For preparing notice to produce on the trial or hearing of an action, or notice to admit.	0	7	6	0	5	0
If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio	0	1	0	0	0	8
And for each copy, such allowance as the taxing officer shall think proper, not exceeding per folio	0	0	4	0	0	4
For preparing notice of motion	0	5	0	0	3	0
Or per folio	0	1	0	0	1	0
Copy for service	0	1	0	0	1	0
Or per folio	0	0	4	0	0	4
For preparing any necessary or proper notice, not otherwise provided for, or any demand, pursuant to Ord. VII. rr. 1 and 2	0	1	6	0	1	6
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three	0	1	0	0	1	0
And for each copy for service, per folio beyond such three	0	0	4	0	0	4
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio	0	0	4	0	0	4
Except as otherwise provided, the allowances for services include copies for service.						
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.						
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3*l.*						
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.						

	Higher Scale.			Lower Scale.		
APPEARANCES.	£	*s.*	*d.*	£	*s.*	*d.*
Entering any appearance	0	6	8	0	6	8
If entered at one time, for more than one person, for every defendant beyond the first	0	2	0	0	1	0
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above	0	6	8	0	6	8
INSTRUCTIONS.						
To sue or defend	0	13	4	0	6	8
For statement of claim or special case	2	2	0	0	13	4
For indorsement of writ of summons when no further statement of claim	1	1	0	0	13	4
For originating summons 6*s.* 8d., or not to exceed	1	1	0	1	1	0
For defence or further defence	0	13	4	0	6	8
For counterclaim	0	13	4	0	6	8
For reply when defendant sets up a counterclaim	1	1	0	0	13	4
For reply or further reply in any other case with or without joinder of issue	0	13	4	0	6	8
For confession of defence	0	13	4	0	6	8
For joinder of issue without other matter	0	13	4	0	6	8
For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness	0	13	4	0	6	8
To amend any pleading	0	13	4	0	6	8
For affidavit in answer to interrogatories, and other special affidavits	0	6	8	0	6	8
To appeal against order of Court or Judge, and to appear thereon	1	1	0	0	13	4
To add parties by order of Court or Judge	0	13	4	0	6	8
For counsel to advise on evidence when the evidence in chief is to be taken orally	0	6	8	0	6	8
Or not to exceed	1	1	0	1	1	0
For counsel to make any application to a Court or Judge where no other brief	0	10	0	0	6	8
For brief on motion for special injunction	1	1	0	0	13	4
For brief on hearing or trial of action upon notice of trial or notice for judgment given, whether such trial be before a Judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact before a Judge, commissioner, or referee, or on assessment of damages	2	2	0	1	1	0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.						

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
The fees for instructions for brief are to apply to a hearing on further consideration in Court only where an order for accounts and inquiries was made without such hearing or trial, as above mentioned.						
Drawing Pleadings and other Documents.						
Statement of claim	1	1	0	0	10	0
Or per folio	0	1	0	0	1	0
Defence	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Counterclaim	1	1	0	0	5	0
Or per folio	0	1	0	0	1	0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Particulars, breaches, and objections, when required, and one copy to deliver	0	6	8	0	5	0
Or such amount as the taxing officer shall think fit, not exceeding per folio	0	1	0	0	0	8
If more than one copy to be delivered, for each other copy, per folio	0	0	4	0	0	4
Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio	0	1	0	0	1	0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition before a Court or Judge, sheriff, commissioner, referee, examiner, or officer of the Court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio	0	1	0	0	1	0
Brief on application to add parties	0	10	0	0	6	8
Or per folio	0	1	0	0	1	0
Brief on further consideration, per sheet of 10 folios	0	6	8	0	6	8
Accounts, statements, and other documents for the Judges' chambers, when required, not exceeding per folio	0	1	0	0	0	8
Advertisements to be signed by Judge's clerk, including attendance therefor	0	13	4	0	6	8
Bill of costs for taxation, including copy for the taxing officer	0	0	8	0	0	8

	Higher Scale.			Lower Scale.		
COPIES.	£	s.	d.	£	s.	d.
Of pleadings, briefs, and other documents where no other provision is made, at per folio	0	0	4	0	0	4
Where, pursuant to Rules of Court, any pleading, special case, or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio	0	0	4	0	0	4
And for examining the proof print, at per folio	0	0	2	0	0	2
And for printing the amount actually and properly paid to the printer, not exceeding per folio	0	1	0	0	1	0
And in addition for every 20 beyond the first 20 copies, at per folio	0	0	1	0	0	1
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.						
These allowances are to include all attendances on the printer.						
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.						
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (videlicet):						
Of any pleading for delivery to the opposite party, or filing in default of appearance ...						
Of any special case for filing						
Of any petition of right for presentation, if presented in print, and for the solicitor of the treasury, and service on any party ...						
Of any pleading, special case, or petition of right, for the use of the Court or Judge ...						
Of any affidavit to be sworn to in print						
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio ...	0	0	3	0	0	2

	Higher Scale. £ s. d.	Lower Scale. £ s. d.
Such additional allowances for printed copies for the Court or Judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.		
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.		
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted	0 5 0	0 1 0
Or per folio	0 0 4	0 0 4
PERUSALS.		
Of statement of claim, defence, reply, joinder of issue, and other pleading (not being a petition in a pending cause or matter, or summons other than an originating summons), by the solicitor of the party to whom the same are delivered	0 13 4	0 6 8
Or per folio	0 0 4	0 0 4
Of amendment of any such pleading in writing	0 6 8	0 6 8
Or per folio	0 0 4	0 0 4
If same reprinted	0 13 4	0 6 8
Or per folio of amendment	0 0 4	0 0 4
Of interrogatories to be answered by a party by his solicitor	0 13 4	0 6 8
Or per folio	0 0 4	0 0 4
Of special case by the solicitor of any party except the one by whom it is prepared	0 13 4	0 6 8
Or per folio	0 0 4	0 0 4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Ord. XVI. r. 49, and of defendant's defence and counterclaim served on a person not a party under Ord. XXI. r. 13, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has been previously allowed such perusal	0 13 4	0 6 8
Or per folio	0 0 4	0 0 4
Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served	0 13 4	0 6 8

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
Or if to admit facts under Ord. XXXII. r. 4, per folio	0	1	0	0	1	0
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio	0	0	4	0	0	4

ATTENDANCES.

To obtain consent of next friend to sue in his name or of a guardian ad litem	0	13	4	0	6	8
To deliver, or file in lieu of delivery, any pleading (not being a petition or summons) and a special case	0	6	8	0	3	4
To inspect, or produce for inspection, documents pursuant to a notice to admit	0	13	4	0	6	8
Or per hour	0	6	8	0	6	8
To examine and sign admissions	0	13	4	0	6	8
To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit, pursuant to notice under Ord. XXXI. r. 14	0	6	8	0	6	8
Or per hour	0	6	8	0	6	8
To obtain or give any necessary or proper consent	0	6	8	0	6	8
To obtain an appointment to examine witnesses	0	6	8	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person	0	13	4	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
Or if without counsel, not to exceed	3	3	0	3	3	0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit	0	6	8	0	6	8
On a summons at Judges' chambers	0	6	8	0	6	8
Or according to circumstances not to exceed	1	1	0	1	1	0
In the Chancery Division, all allowances for attending at the Judges' chambers are to be by the Judge or chief clerk as heretofore.						
To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy	0	6	8	0	6	8
On counsel with brief or other papers—						
If counsel's fee one guinea	0	6	8	0	3	4
If more and under five guineas	0	6	8	0	6	8
If five guineas and under 20 guineas	0	13	4	0	6	8
If 20 guineas	1	1	0	0	13	4
If 40 guineas or more	2	2	0		—	

	Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.
On consultation or conference with counsel...	0	13	4	0	13	4
To enter or set down action, special case, or appeal, for hearing or trial.....	0	6	8	0	6	8
In Court on motion of course and on counsel and for order.....	0	13	4	0	10	0
To present petition for order of course and for order	0	13	4	0	10	0
In Court on every special motion, each day...	0	13	4	0	6	8
On same when heard each day	0	13	4	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
On special case, or special petition, or application adjourned from the Judges' chambers, when in the special paper for the day, or likely to be heard	0	10	0	0	6	8
On same when heard	1	1	0	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a Judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper.....	0	10	0	0	10	0
When heard or tried	1	1	0	0	13	4
Or according to circumstances, not to exceed	3	3	0	3	3	0
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent.....	3	3	0	3	3	0
And expenses (besides actual reasonable travelling expenses) each day, including Sundays	1	1	0	1	1	0
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case	1	11	6	1	1	0
The expenses in such case to be rateably divided.						
To hear judgment when same adjourned.....	0	13	4	0	6	8
Or according to circumstances	1	1	0	0	13	4
To deliver papers (when required) for the use of a Judge prior to a hearing.....	0	6	8	0	6	8
If more than one Judge	0	13	4	0	13	4
On taxation of a bill of costs	0	6	8	0	6	8
Or according to circumstances, not to exceed	2	2	0	2	2	0
Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee as he shall think proper.						

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
In actions and matters for purposes within the cognizance of the Court of Chancery before the Principal Act came into operation, such further fee as the taxing officer may think fit, not exceeding the allowances heretofore made.						
To obtain or give an undertaking to appear..	0	6	8	0	6	8
To present a special petition, and for same answered	0	6	8	0	6	8
On printer to insert advertisement in Gazette	0	6	8	0	6	8
On printer to insert same in other papers, each printer	0	6	8		—	
Or every two		—		0	6	8
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing	0	6	8	0	6	8
For an order drawn up by chief clerk, and to get same entered	0	6	8	0	6	8
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same	0	6	8	0	6	8
To mark conveyancing counsel or taxing master	0	6	8	0	6	8
For preparing and drawing up an order made at chambers in proceedings to wind-up a company and attending for same, and to get same entered	0	13	4	0	13	4
And for engrossing every such order, per folio	0	0	4	0	0	4
NOTE.—An order of course means an order made on an *ex parte* application, and to which a party is entitled as of right on his own statement and at his own risk.						
To examine an abstract of title with deeds, per hour, in a cause or matter	0	10	0	0	10	0
To produce deeds for such purpose, per hour	0	6	8	0	6	8

OATHS AND EXHIBITS.

Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour in London or the country	0	1	6	0	1	6
The solicitor for preparing each exhibit in town or country	0	1	0	0	1	0
The commissioner for marking each exhibit..	0	1	0	0	1	0

Term Fees.	Higher Scale. £ s. d.	Lower Scale. £ s. d.
For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, after appearance entered, shall take place.	0 15 0	0 15 0
And further, in country agency causes or matters, for letters	0 6 0	0 6 0
Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.		
In addition to the above an allowance is to be made for the necessary expense of postages, carriage, and transmission of documents.		

Specimen *of* Pleading *in an* Action *for* "Revocation *of* Probate."

In the High Court of Justice. 1892. C. No. 1.
Probate, Divorce and Admiralty Division.
(Probate.)

Fos. 7. Writ issued the day of 18 .

Between M. A. A. C. an infant (by G. C. her guardian) Plaintiff,
and
R. C. and A. C. . . . . Defendants.

Statement of Claim.

1. The plaintiff is the lawful niece and one of the next of kin of E. V. G. late of who died on the 26th day of November 1879 a widow and intestate.

2. The defendants are the executors of a pretended last will and testament with one codicil thereto the said will and codicil both bearing date the 20th day of January 1879 and purporting to have been duly executed by the said deceased.

3. The said defendants duly obtained probate in common form of the said pretended will and codicil at the Principal Registry of the Probate Division of Her Majesty's High Court of Justice on the 16th day of December 1879.

4. The plaintiff says that the said pretended last will and codicil were not duly executed by the said deceased in accordance with the provisions of the Statute 1 Vict. c. 26.

5. That the said deceased at the time of the execution of the said pretended last will and codicil did not know and approve of the contents thereof.

6. That the said deceased at the time of the execution of the said pretended last will and codicil was not of sound mind memory and understanding.

7. That the execution of the said pretended last will and codicil was obtained by the undue influence of A. C. of in the county of and C. his mother.

The Plaintiff Claims—

1. That the Court will pronounce against the said pretended last will and codicil and revoke the grant of probate in common form made to the defendants as aforesaid and declare that the said deceased has died intestate.
2. That the Court will be pleased to grant administration of the personal estate of the said deceased to the plaintiff or to such other person as to the Court may seem meet.
3. That the plaintiff may have such other and further relief in the premises as to the Court may seem meet.

Delivered this day of , 18 , by of , solicitors for the plaintiff.

IN THE HIGH COURT OF JUSTICE. 1892. C. No. 1.
Probate Division.

Between M. A. A. C. an infant (by G. C. her guardian) Plaintiff,
and
R. C. and A. C. . . . . Defendants,
and
W. D. . . . . Party cited,
and
G. F. and M. (his wife) and W. H. F. . Interveners.

STATEMENT OF DEFENCE AND COUNTERCLAIM.

1. The defendants R. C. and A. C. deny that E. V. G. died intestate and they deny the several allegations in paragraphs 4, 5, 6 and 7 of the statement of claim.

And by way of counterclaim the said R. C. and A. C. say as follows:—

2. The will and codicil referred to in the statement of claim were signed by the said deceased E. V. G. in the presence of two witnesses present at the same time that is to say A. B. H. and A. C. who subscribed the same in the presence of the said deceased.

3. The deceased was at the time of the execution of the said will of sound mind memory and understanding.

4. The said M. A. A. C., W. D., M. F. and W. H. F. are next of kin of the said deceased.

The said defendants (plaintiffs in the counterclaim) claim as follows:—

1. That the Court will adjudge probate of the said will and codicil in solemn form of law.
2. That they may have such further or other relief as the nature of the case may require.

Delivered by of this day of 18 , solicitors for the defendant.

IN THE HIGH COURT OF JUSTICE. 1892. C. No. 1.
Probate, Divorce and Admiralty Division.
(Probate.)

Between M. A. C. an infant (by G. C. her guardian) . Plaintiff,
and
R. C. and A. C. . . . . Defendants,
and
W. D. . . . . Party cited,
and
G. F. and M. (his wife) and W. H. F. . Interveners.

REPLY.

The plaintiff denies the allegations contained in the defendants' statement of defence and counterclaim and joins issue thereon.

Reply delivered the day of , 18 , by of , solicitors for the plaintiff.

EXAMPLE *of* ENDORSEMENT *on* WRIT OF SUMMONS *in an* ACTION *brought for the purpose of* SETTING UP *a* LOST WILL.

The plaintiff claims to be one of the executors of the last will, dated in or about the summer of 18 (or on the day of 18) of H. E. P., late of M. P., in the county of S., deceased, who died on the day of 18 , she the said deceased having destroyed the said will at a time when she was not of sound mind and memory and understanding, and to have the contents of the said will established.

EXAMPLE *of* SET OF PLEADINGS *in an* ACTION *for the purpose of* SETTING UP *a* LOST WILL.

IN THE HIGH COURT OF JUSTICE. 1892. C. No. 2.
Probate, Divorce and Admiralty Division.
(Probate.)
Writ issued the day of 18 .

Between C. P. . . . . Plaintiff,
and
C. B. . . . . Defendant.

STATEMENT OF CLAIM.

1. The plaintiff is one of the executors appointed under the will of his late wife, H. E. P., late of M. P., in the county of S., deceased, who died on the 9th day of December, 1889, the said will having been duly executed by the said deceased in or about the summer of 1888.

2. The said will was subsequently destroyed by the said deceased in the month of October last, at the time when she was not of sound mind and memory and understanding.

3. The contents of the said will were in substance or to the effect as follows:—"This is the last will and testament of me H. E. P. of M. P., in the county of S., wife of C. P. of the same place, solicitor. I appoint my dear husband C. P. and my friend J. A. of B., surgeon, executors of this my will. I give and bequeath to my said husband C. P. a diamond ring (the testatrix also mentioned certain other articles of jewellery in the bequest to the plaintiff, the particulars of which he is unable to give) and to my sister C. B. all my other jewellery. I give and devise all the rest of my property, lands, tenements, and hereditaments whatsoever and wheresoever, and all the rest and residue of my personal estate to my said husband C. P. absolutely." The said will was signed by the deceased in the presence of C. D. H. of B. aforesaid, solicitor, and M. C. of N. M. aforesaid, domestic servant.

4. The plaintiff further says that after the destruction of the said will in the manner heretofore mentioned the said deceased desired and intended to make a fresh will, and therein to devise all her real

estate to the plaintiff, and that the defendant, being the sister and heiress-at-law of the said deceased, and well knowing that the said deceased intended to make a fresh will, which as to such real estate would be in favour of the plaintiff, did by force, fraud and duress prevent and hinder the said deceased from making and executing such fresh will as aforesaid.

The plaintiff claims—

1. That the Court shall decree probate of the contents of the said will as set forth in paragraph 3 of the statement of claim.
2. In the alternative—That the Court shall declare that the defendant is a trustee of the real estate of which the deceased died seised or entitled to for the plaintiff (*a*).
3. Such other and further relief as to the Court shall seem meet.

PARTICULARS OF FRAUD SO FAR AT PRESENT KNOWN TO THE PLAINTIFF.

That the defendant on the 27th of November last established herself at the house of the plaintiff at N. M. aforesaid, and continued there until the death of the deceased on the 9th day of December last, and there, in the absence of the plaintiff from the said 27th day of November last, and thenceforward to the date of the death of the deceased, with the assistance and co-operation of M. C., one of the witnesses to the original will destroyed by the deceased, and set out in paragraph 3 of the statement of claim, and the servant of the defendant, and the connivance of a nurse named E. P., well knowing that the said H. E. P. wished and intended to make a new will leaving her real estate to the plaintiff, prevented or hindered the said H. E. P. from doing so, and for the purpose of carrying out her said fraud prevented Mr. J. H. D., trustee of the will of the father of the said H. E. P., from gaining access to the deceased—the defendant well knowing that the deceased desired to see the said J. H. D. about and for the purpose of making a fresh will—until it was too late, and further wilfully abstained from sending for Mr. C. D. H., the family solicitor of the deceased, or some other practitioner or competent person for the like purpose, and also prevented the plaintiff from having access to the deceased, whereby he was unable to assist her to carry out her testamentary intentions in his favour.

L. D. P.

Delivered the day of 18 by of agents for .

(*a*) See *Betts* v. *Doughty*, 5 P. D. 26; 48 L. J., P. D. & A. 71; 41 L. T. 560.

In the High Court of Justice.
Probate, Divorce and Admiralty Division.
(Probate.)

Between C. P. . . . . Plaintiff,
and
C. B. . . . . Defendant.

Statement of Defence.

1. The said alleged will was not duly executed in accordance with the Wills Acts.
2. The said deceased duly revoked the said alleged will by burning, tearing, or otherwise destroying the same, with the intention of revoking the same, at a time when she was of sound mind, memory, and understanding.
3. The contents of the said will were not as alleged.
4. The said deceased did not desire or intend to make any fresh will, and the defendant did not by force or by fraud, or by duress, or at all, prevent or hinder the deceased from making any such will.

C. M.

Dated and delivered the day of 18 by of agents for .

In the High Court of Justice. 1892. C. No. 2.
Probate, Divorce and Admiralty Division.
(Probate.)

Between C. P. . . . . Plaintiff,
and
C. B. . . . . Defendant.

Reply.

The plaintiff takes and joins issue on the statement of defence.

Reply delivered the day of by of agent for .

ORDER AS TO SUPREME COURT FEES, 1884.

Fees to be taken in Supreme Court.

1. The fees and percentages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those courts, or the Supreme Court or any Judge of those courts, or any of them. And the said fees and percentages shall, until otherwise determined by the Treasury, be taken by stamps in the same manner as heretofore, except those taken in the District Registries, which shall, until otherwise determined by the Treasury, be taken as the fees and percentages are now taken.

Saving clause as to certain existing fees.

2. The provisions in this Order shall not apply to or affect any of the matters following (that is to say):—

The existing fees and percentages in respect of any of the jurisdictions which are not, by the Supreme Court of Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or the Court of Appeal.

The existing fees and percentages in respect of any matters within the jurisdiction of the Court of Probate at the time of the passing of the Supreme Court of Judicature Act, 1875, other than probate actions.

Commencement.

6. This Order shall come into operation on the 25th day of January, 1884, and may be cited as "The Order as to Supreme Court Fees, 1884."

THE SCHEDULE ABOVE REFERRED TO.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the Rules of the Supreme Court, 1883.

Summonses, Writs, Notices, Commissions, and Warrants.

	£	s.	d.
1. On sealing a writ of summons for commencement of an action	0	10	0
2. On sealing a concurrent, renewed or amended writ of summons for commencement of an action . .	0	2	6
2A. On bespeaking a request for service of notice of writ by a Foreign Court under Ord. XI. r. 8 . . (*Added by Order as to S.C. Fees, November*, 1903.)	1	0	0
3. On sealing a notice for service under Ord. XVI. r. 48	0	2	6

	£	s.	d.
4. On sealing a writ of mandamus	1	0	0
5. On sealing a writ of subpœna for witnesses, not exceeding three persons	0	5	0
6. On sealing a writ of execution, a subpœna pursuant to the Court of Probate Act, 1858, section 23, and every other writ	0	5	0
7. On sealing or issuing an originating summons under the Act 6 & 7 Vict. c. 73, for the taxation of a solicitor's bill of costs within twelve months after delivery, or delivery of a bill of costs by a solicitor, including the order to be made thereon . . . (*Note.—Compare fee No.* 65.)	0	10	0
8. On sealing any other originating summons . .	0	10	0
9. On amending same . . . . . (*As amended by Order as to S.C. Fees, November*, 1903.)	0	2	6
14. On sealing or issuing a commission to take oaths or affidavits in the Supreme Court	5	0	0
15. On every other commission	1	0	0
16. On marking a copy of a petition of right for service .	0	5	0
Appearances.			
17. On entering an appearance, for each person . .	0	2	0
18. On amending same	0	2	0
Copies.			
21. On making a copy and marking same as an office copy, for each folio	0	0	6
22. On a copy in a foreign language—the actual cost.			
23. On a copy of a plan, map, section, drawing, photograph, or diagram—the actual cost.			
24. On a printed copy of an order, not being an office or certified copy, for each folio	0	0	1
Attendances.			
25. On an application, with or without a subpœna, for any officer to attend as a witness, or to produce records or documents to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office	1	0	0
The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.			
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.			

Oaths, &c.

	£	s.	d.
26. On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, for each person making the same	0	1	6
27. And in addition thereto for each exhibit therein referred to and required to be marked . . .	0	1	0

Filing.

28. On filing a special case or petition of right . .	1	0	0
29. On filing, except in Admiralty actions, and unless otherwise provided, an affidavit, deposition, or set of depositions (including any exhibits annexed to any such affidavit or deposition), statement of claim in default of appearance, official and special referees' certificates, petition, preliminary act, submission to arbitration, award, warrant of attorney, cognovit, bail, satisfaction piece, bond, writ of execution with return, and power of attorney, and every other proceeding in a Probate action or in a Divorce or other Matrimonial cause or matter required by Act of Parliament, general order, or order in the action, cause or matter to be filed in the principal Probate Registry	0	2	6
31. On filing scrips in a Probate action or on depositing, pursuant to an order in any cause or matter, any documents for safe custody or production, if the number does not exceed five	0	5	0
32. If exceeding five	0	10	0
33. On a receipt for any document or documents to which the two last fees apply, when delivered out, or for any other document or documents when delivered out of the principal Probate Registry . . .	0	2	6

Certificates.

42. On a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof, unless otherwise provided	0	2	6
43. Or if required for use in a foreign country . .	0	5	0
44. Or if a certificate of proceedings pursuant to Ord. LXI., r. 24	0	5	0

Searches and Inspections.

45. On an application to search for an appearance or an affidavit, and inspecting the same . . .	0	1	0
46. On an application to search an index, and inspect a pleading, judgment, decree, order, or other record, unless otherwise expressly provided for by any Act of Parliament or this Order, and to inspect scrips filed or documents deposited pursuant to an order for safe custody or production, for each hour or part of an hour occupied	0	2	6
47. Not exceeding on one day	0	10	0

Examination of Witnesses.

[NOTE.—*See Ord.* 37, *r.* 51 (*n.*), *where the fees payable to Examiners will be found.*]

	£	*s.*	*d.*
48. On every memorandum of appointment for an examination to be taken before an Examiner of the Court	0	5	0
49. On every witness sworn and examined by an officer of the Court in his office, unless otherwise provided, including oath, for each hour or part of an hour	0	10	0
50. On an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day. . .	3	0	0
51. The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer, or his clerk, taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit. The officer may also require an undertaking, in writing, to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.			

Hearing.

52. On entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause or matter for trial or hearing in any Court in London or Middlesex or at any assizes, including hearing on further consideration where no such fee was paid on the original hearing, whether on summons adjourned from chambers or otherwise, and including special case, a petition in a Divorce or Matrimonial cause or matter by which a proceeding is commenced, and petition of right, but not any other petition, nor any other summons adjourned from chambers. [See Order of Oct., 1884, *post.*]	2	0	0

[NOTE.—This fee is payable though the matter for hearing does not arise in an action, as in the case of a rule nisi against a justice under 11 & 12 Vict. c. 44, s. 5 (*Ex p. Hasker*, 14 Q. B. D. 82). In *Ex p. Dudley* (33 W. R. 750), it was held by a Divisional Court, after consultation with other Judges, that this fee was not payable on an appeal from chambers (*Ex p. Hasker*, *supra*). Subsequent to *Ex p. Dudley*, appeals from chambers in matters of practice and procedure were transferred to the Court of Appeal, and this fee has become payable on setting down all such appeals. The ruling in *Ex p. Dudley*, however, would appear to apply still to appeals from chambers to the Divisional Court in matters other than practice and procedure.

A second fee is not payable on re-entry of actions made remanet, adjourned, or postponed from one assize to another, or sent down for trial on circuit after entry in London, or vice versâ, or on change of venue from one town to another on the same circuit. But a second fee is payable on re-entry of a case for new trial after order for new trial, or after disagreement of jury. (So decided by the Treasury on question submitted by the Master of the Crown Office, July, 1904.)]

	£	*s.*	*d.*
53. On entering directions of the Judge at a trial pursuant to Ord. XXXVI., rr. 41 and 42, and certifying same when required	1	0	0
55. On answering and setting down for hearing in Court a petition by which any proceeding is commenced, unless otherwise provided	1	0	0
56. Any other petition	0	10	0

Judgments, Decrees and Orders.

On drawing up and entering judgments, decrees, and orders—[See Order of Oct., 1884, *post.*]

57. If made in Court on the original hearing or hearing on further consideration of a cause, or on the hearing of a motion, special case or petition, or on any application to the Court of Appeal unless otherwise provided	1	0	0
Where in a divorce or matrimonial cause or matter a decree nisi is made, and afterwards a decree absolute, no fee shall be payable on the decree absolute.			
(*As amended by Order as to S. C. Fees, Nov.*, 1903.)			
58. If a judgment without hearing in Court or a final order in a probate action made by a Registrar, or if an order made in a probate action or in a divorce or matrimonial cause or matter on a motion, including filing the case or application on which the order is made	0	10	0
59. If made on the hearing of an originating summons, unless otherwise provided	0	10	0
65. If an order of course under the Act 6 & 7 Vict. c. 73, to tax a solicitor's bill of costs within twelve months after delivery, or for delivery of a bill of costs by a solicitor where fee No. 7 is not applicable	0	10	0
71. On proceedings pursuant to an order in any cause or matter where the amount of the outstanding or undisposed of estate of a deceased person or of the estate subject to any trust or partnership shall be ascertained for the purpose of being dealt with in such cause or matter without deducting any payment to creditors or parties interested after the commencement of the cause or matter, for every 100*l.*, or portion of 100*l.*, of the amount or value thereof	0	1	0

	£	s.	d.
72. On taking an account of moneys received by an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, partner, receiver, guardian, consignee, bailee, manager, provisional official or other liquidator, sequestrator, or execution creditor, or other person liable to account, for every 100*l.*, or fraction of 100*l.*, of the amount found to have been received without deducting any payment	0	1	0

[N.B.—The percentage is to be taken on the amount found to have been received on any periodical account (*Re Crawshay*, 39 C. D. 552).]

On Proceedings in the King's Bench and Probate, Divorce and Admiralty Divisions, except in Admiralty Actions, before a Master Registrar or District Registrar.

82. The fee No. 72 on taking accounts applicable to proceedings in the Chancery Division upon similar proceedings in these Divisions—

83. On every other reference, investigation, or inquiry, including examination of witnesses, if any, for every hour or part of an hour the officer is occupied	0	10	0

Taxation of Costs.

(*See also fee* 81, *for certificate of costs.*)

102. On taxing a bill of costs where the amount allowed does not exceed 4*l.*	0	2	0
103. Where the amount exceeds 4*l.*, for every 2*l.* allowed or a fraction thereof	0	1	0

These fees, unless otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs as taxed; but the fees shall be due and payable, if no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.

The taxing officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.

Ord. V., r. 58, of the Chancery Funds Consolidated Rules, 1874, shall continue to be acted upon in cases to which it is applicable.

[This rule is now repealed, and rule 67 of the S. C. F. R., 1894 (Part III., *post*), which is identical in effect, is substituted for it.]

On Proceedings in the Pay Office of the Supreme Court.
(See Part III., *post.*)

		£	*s.*	*d.*
104.	On a certificate of the amount and description of any money, funds, or securities, including the request therefor	0	1	0
105.	On a transcript of an account for each opening, including the request therefor	0	2	0
106.	On a request to the paymaster, Bank of England, or a registrar of the Probate, Divorce and Admiralty Division (unless otherwise provided), for any of the following purposes: paying, lodging, transferring, or depositing money, funds, or securities in court without an order, or money in addition to the amount directed by an order to be paid in; paying out of Court any money without an order or a certificate of a taxing officer; information in writing in respect of any money, funds, or securities, or any transaction in the pay office . .	0	1	0
107.	On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during 15 years	0	2	6
108.	On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in Court pursuant to the statute 10 & 11 Vict. c. 96	0	1	0
109.	On preparing a power of attorney	0	3	0

[NOTE.—*Fees* 110 *to* 118 *have ceased to be in force, and the following fees substituted.*]

Miscellaneous.

125.	On a fiat of a Judge	0	5	0
126.	On signing, settling, or approving an advertisement	0	10	0
128.	On an appointment of a receiver in a Probate action	1	0	0
129.	On taking a recognisance or bond, whether one or more than one recognisor or obligor, and whether entered into by all at one time or not . . .	0	10	0
130.	On assignment of a bond	0	5	0
132.	On a commitment	0	5	0
133.	On an application to produce Judges' notes . .	0	5	0
135.	On vacating a recognisance or bond . . .	0	10	0

(*As amended by Order as to S.C. Fees, November*, 1903. *Where a bond and recognisance are vacated together, only one fee is payable. By direction of the Chancery Judges, March*, 1904.)

136.	On a citation	0	5	0

FORMS

UNDER THE JUDICATURE ACTS.

Reprinted from the Annual Practice, 1906 (*a*).

[Rules of Court include Forms (J. A. 1873, s. 100).]

[NOTE, ED.—*In order to prevent these forms from being in some cases misleading, the original dates have been altered.*]

[APPENDIX A.]

PART I.—FORMS OF WRITS OF SUMMONS, &c.

No. 1.—*General Form of Writ of Summons* (Ord. 2, rr. 3 and 8).

19 . [*Here put the letter and number* (*see note* (1) *following this form*)].

In the High Court of Justice.
Division.

Between A. B., plaintiff,
and
C. D., defendant.

EDWARD THE SEVENTH, by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith.

To C. D. of in the county of .

We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A. B.; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, (*see note* (2) *following this form*), Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand nine hundred and

(*a*) For convenience of reference the Forms are numbered as they are printed in the Annual Practice, and the references have been adhered to although all the Forms have not been printed.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [or *defendants*] may appear hereto by entering an appearance [or *appearances*] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, *&c.*

This writ was issued by the said plaintiff, who resides at *or*, this writ was issued by E. F., of , whose address for service is , solicitor for the said plaintiff, who resides at *or*, this writ was issued by G. H., of , whose address for service is , agent for of , solicitor for the said plaintiff, who resides at [*mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any*] (3).

Indorsement to be made on the writ (4) *after service thereof.*

This writ was served by me at on the defendant on the day of 19 .

Indorsed the day of 19 .

(Signed)
(Address)

(1) If the action is for administration the writ must be headed "In the matter of the estate of deceased."

(2) Now Robert Threshie Reid, Baron Loreburn. Where the name of the Lord Chancellor was accidentally omitted and was afterwards inserted by amendment, the Court held that the writ was good though the Statute of Limitations had intervened between the issue and amendment of the writ (*McNay* v. *Alt*, 66 L. T. 832).

(3) The address for service must be within three miles from the principal entrance to the Central Hall of the Royal Courts of Justice (Ord. 4, r. 1).

(4) Within three days (see Ord. 9, r. 15).

Writs of Summons generally.—See note to Ord. 2, r. 1.

Requirements before Issue.—See Practice note to Ord. 5, r. 2.

Appearances in London are entered in the Central Office (Ord. 12, r. 2).

Address of Defendant.—See Ord. 2, r. 4 (n.).

No. 5.—*Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction* (Ord. 2, r. 5).

[*Title, &c., as in No.* 1.]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1].

To C. D., of .

We command you, C. D., That within [*here insert the number of days directed by the Court or Judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of our High Court of Justice in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, *&c.*

Memoranda and Indorsement as in Form No. 1.

Indorsement to be made on the writ before the issue thereof.

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

[NOTE, ED.—The above indorsement "N.B." must be on any concurrent writ for service out of the jurisdiction, or of which notice is to be served out of the jurisdiction. For practice where a defendant out of the jurisdiction is added, see Ord. 6, r. 2. (n.); "Concurrent Writ for Service out of the Jurisdiction." The indorsement "N.B." need not be made on a writ against defendants domiciled abroad, but whom it is intended to serve within the jurisdiction: see *Pollexfen* v. *Sibson*, 16 Q. B. D. 792. See *Sedgwick* v. *Yedras Mining Co.*, Form 6, *infra* (n.).]

No. 6.—*Specially Indorsed Writ for Service out of the Jurisdiction* (Ord. 2, r. 5).

[*Heading, as in No.* 1.]

EDWARD THE SEVENTH, by the grace of God, &c. [*as in Form No.* 1], to , of , in the of .

We command you, That within (1) days after service (2) of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of .

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be used, &c. [*as in Form No.* 5, *supra*].

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim:—

The plaintiff's claim is

Particulars:—

(Signed)

And £ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within (3) days from service (4) hereof, further proceedings will be stayed.

This writ was issued, &c. [*see Form* 1, *supra*].

This writ [*or* notice of this writ] was served, &c.

N.B.—This writ is to be used, &c. [*as in Form No.* 5, *supra*].

(1) Insert number of days directed by Court or Judge.
(2) If notice of the writ is to be served, insert here "of notice."
(3) Insert number of days limited for appearance.
(4) If notice to be served, insert here "of notice."

No. 9.—*Notice of Writ in lieu of Service to be given out of the Jurisdiction* (Ord. 2, r. 5).

[*Title, &c., as in No.* 1.]

To G. H., of .

Take notice, that A. B., of has commenced an action against you, G. H., in the Division of His Majesty's High

Court of Justice in England, by writ of that Court, dated the day of , A.D. 19 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action ; and in default of your so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Central Office, Royal Courts of Justice, London.

(Signed) A. B. of &c.
or X. Y. of &c.
Solicitor for A. B.

N.B.—This notice is to be used where the person to be served is not a British subject, and is not in British dominions.

[NOTE.—See *Padley* v. *Camphausen*, 10 C. D. 550. It is not necessary to indorse on the notice a copy of the order giving leave to serve it, nor need any notice be given of such order : see *Huthwait* v. *Smith*, W. N. (85) 192 ; *Reynolds* v. *Coleman*, 36 C. D. 453.]

No. 10A.—*Letter forwarding Request for Service Abroad* (Ord. 11, r. 8).

The President of the Division of the High Court of Justice presents his compliments to his Majesty's Principal Secretary of State for Foreign Affairs, and begs to enclose a notice of a writ of summons issued in an action of *versus* pursuant to order, out of the High Court of Justice in England for transmission to the Ministry of Foreign Affairs in [*name of country*] with the request that the same may be served personally upon [*name of defendant to be served*] against whom proceedings have been taken in the English Court, and with the further request that such evidence of the service of the same upon the said defendant may be officially certified to the English Court, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the Courts of the [*name of country*] in proving service of legal process.

The President begs further to request that in the event of efforts to effect personal service of the said notice of writ proving ineffectual the Government or Court of the said country be requested to certify the same to the English Court.

[R. S. C. (July) 1903, Sched.]

No. 10B.—*Request for Service Abroad* (Ord. 11, r. 8).

[*Title as in No.* 1.]

I (*or* we) hereby request that a notice of writ of summons in this action be transmitted through the proper channel to [*name of country*] for service (*or* substituted service) on the defendant [*naming him*] at [*address of defendant*] or elsewhere in [*name of country*].

And I (*or* we) hereby personally undertake to be responsible for all expenses incurred by his Majesty's Principal Secretary of State for Foreign Affairs in respect of the service hereby requested, and on receiving due notification of the amount of such expenses I (*or* we) undertake to pay the same to the Chief Clerk at the Foreign Office, and to produce the receipt for such payment to the proper officer of the High Court.

Dated, *&c.*, (Signature of Solicitor.)

[R. S. C. (July) 1903, Sched.]

No. 10C.—*Letter forwarding Request for Substituted Service* (Ord. 11, r. 8).

The President of the Division of the High Court of Justice presents his compliments to his Majesty's Principal Secretary of State for Foreign Affairs, and begs to enclose a notice of a writ of summons in the case of *versus* in which the plaintiff has obtained an order of the English High Court (which is also enclosed) giving leave to bespeak a request that the said notice of writ may be served by substituted service on the defendant at in the [*name of country*].

The President requests that the said notice of writ and order may be forwarded to the proper authority in [*name of country*] with the request that the same may be transmitted by post addressed to the defendant at (the last known place of abode *or* the place of business) of the said defendant, or there delivered in such manner as may be consistent with the usage or practice of the Courts of [*name of country*] for service of legal process where personal service cannot be effected; and with the further request that the same may be officially certified to the English Court, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the Courts of the [*name of country*] in proving service of legal process.

No. 18.—*Form of Memorandum for Renewed Writ* (Ord. 8, r. 1).

[*Heading as in Form* 1.]

Seal renewed writ of summons in this action indorsed as follows:

[*Copy original writ and the indorsements.*]

No. 19.—*Certificate of Solicitor as to Assignment of Cause or Matter* (Ord. 5, r. 9 (e)).

[*Heading as in Form* 1.]

I, A. B., solicitor for the above-named hereby certify that the writ [summons *or* petition] annexed hereto relates to the administration of the same trust [*or* the winding-up of the same company], as or is so connected with the cause or matter entitled [*insert title*] and assigned to the Hon. Mr. Justice , as to be conveniently dealt with by the same Judge.

[To be countersigned by the Chief Clerk of the Judge to whom the action is to be thereby assigned: see Ord. 5, r. 9 (e).]

PART II.—FORMS OF ENTRY OF APPEARANCE.

No. 1.—*Memorandum of Appearance in General* (Ord. 12, rr. 8, 13).

In the High Court of Justice.
Division. 19 . No. .

Between , Plaintiff,
and
, Defendant.

Enter an appearance for in this action.

Dated the day of , 19 .

(Signed) of(1)
Agent for of .

[NOTE.—For Practice requirements on entering, see Ord. 12, r. 1, and note.

(1) If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 2.—*Notice of Entry of Appearance* (Ord. 12, r. 9).

[*Heading as in Form* 1.]

Take notice, that I have this day entered an appearance at the Central Office, Royal Courts of Justice [*or* at the office of the Registrar of the District Registry], for the defendant to the writ of summons in this action.

[*If statement of claim is required, add*] The said defendant requires delivery of a statement of claim.

Dated the day of 19 .

(Signed) of
Agent for solicitor for the defendant.

To .

[*As to requiring delivery of a statement of claim, see* Ord. 20, S. C. R.]

No. 6.—*Entry of Appearance* (Ord. 17, r. 5).

[*Heading as in Form* 1.]

Enter an appearance for who has been served with an order dated the day of to carry on and prosecute the proceedings in this action.

Dated the day of , 19 .

(Signed) of (1)
Agent for of .

(1) If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 7.—*Entry of Appearance to Counterclaim* (Ord. 21, r. 13).

[*Heading as in Form* 1.]

Enter an appearance for to the counterclaim of the above-named defendant in this action.

Dated the day of 19 .

(Signed) of (1)
Agent for of .

[NOTE.—The heading should contain the double title of claim and counterclaim.]

(1) If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 8.—*Affidavit for Entry of Appearance as Guardian* (Ord. 16, r. 18).

[*Heading as in Form* 1.]

I, of make oath and say as follows:—

A. B., of is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of the said infant, and the consent of the said A. B. to act as such guardian is hereto annexed.

Sworn, &c.

[*To this affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.*]

Alternative Form of Affidavit.

[*To meet cases where a positive oath as to fitness cannot reasonably be insisted upon, the following form is accepted.*]

I, of the solicitor for C. D. (*the infant*), make oath and say as follows:—

1. I am informed and verily believe that A. B., of is a fit and proper person to act as guardian of the above-named infant defendant, and the consent of the said A. B. to act as such guardian is hereto annexed.

2. The said A. B. has no interest in the matters in question in this action [matter] adverse to that of the said infant.

Sworn, *&c.*

[NOTE.—This form is no part of the Appendix to the Rules.]

Usual Form of Consent.

[NOTE.—*This form is not part of the Appendix to the Rules.*]

I, A. B., of [*address and addition*], consent to act as guardian *ad litem* for C. D., an infant defendant in this action, and I authorise Mr. , of , to defend this action [*signature of guardian*].

No. 19.—*Præcipe to Withdraw Caveat.*

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray that the caveat against [*state tenor of caveat*], entered by me on the day of , 19 , on behalf of [*state name*] may be withdrawn.

Dated the day of , 19 .

[*To be signed by the person by whom the præcipe for the entry of the caveat was signed.*]

PART III.—GENERAL INDORSEMENTS ON WRITS OF SUMMONS (Ord. 3, r. 3).

SECT. V.—*Probate* (Ord. 3, r. 5).

1.

By an executor or legatee propounding a will in solemn form.

The plaintiff claims to be executor of the last will dated the day of , of C.W., late of , gentleman, deceased, who died on the day of , and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*].

2.

By an executor or legatee of a former will, or a next of kin, &c., of the

The plaintiff claims to be executor of the last will dated the day of , of C. D., late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of , revoked. This

writ is issued against you as the executor of the said pretended will [*or as the case may be*].

deceased, seeking to obtain the revocation of a Probate granted in common form.

3.

The plaintiff claims to be executor of the last will of C. D., late of , deceased, who died on the day of , dated the day of .

By an executor or legatee of will when letters of administration have been granted as in an intestacy.

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4.

The plaintiff claims to be the brother and sole next of kin of C. D., of , deceased, who died on the day of , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.

[APPENDIX B.]

PART I.—AFFIDAVITS OF SERVICE.

[NOTE.—*The affidavits of service here given are not part of Appendix B of the Rules of the Supreme Court, which commences with No. 2 of Part II., infra.*]

No. 1.—*Personal Service of Writ of Summons (whether within or without the jurisdiction)* (Ord. 13, r. 2).

[*Title of Action, &c.*]

I [*name, address, and description of deponent*] make oath and say as follows:—

1. I did on the day of 19 , at [*state where*] personally serve C. D. the above-named defendant [*or* one of the above-named defendants] with a true copy of the writ of summons in this action which appeared to me to have been regularly issued out of the Central Office of the Supreme Court [*or* the District Registry of the High Court of Justice] against the above-named defendant [*or* defendants] at the suit of the above-named plaintiff [*or* plaintiffs] and which was dated the day of 19 .

2. At the time of the said service the said writ and the copy thereof were subscribed in the manner and form prescribed by the Rules of the Supreme Court.

3. I did on the day of indorse on the said writ the day of the month and the week of the said service on the said defendant.

[*Jurat.*] [*Signature of deponent.*]

This affidavit is filed on behalf of the .

No. 3A.—*Service on Officer of a Corporation* (Ord. 9, r 8).

[*Title and commencement as in Form No.* 1.]

1. I did on the day of , 19 , at , personally serve A. B. [Mayor, *or* Town Clerk, *or* Clerk, *or* Treasurer, *or* Secretary] being the head officer of the above-named defendant corporation, with &c. [*continue as in Form No.* 4, *following, omitting the words "which is the registered office of the said defendant company."*]

[NOTE.—This form may be used with necessary alterations for a foreign corporation served with a notice of a writ, but the affidavit must state that the defendants are a corporate body according to the law of the country in which service is effected and service must be made at the principal place of business of the corporation.]

No. 5.—*Service of Notice of Writ on Foreigner Abroad* (Ord. 11, r. 6).

[*Title and commencement as in Form No.* 1.]

1. I did on the day of 19 , at in the [kingdom of, *or as the case may be*], personally serve the above-named defendant C. D. with a notice of the writ of summons in this action, a true duplicate of which notice is hereunto annexed, marked A.

[*It is also advisable, though perhaps not absolutely necessary, to add:—*]

2. I did on the day of 19 , indorse on the said copy notice hereunto annexed, the day of the month and the week of the said service on the said defendant.

[*In the case of a foreign company* (*incorporated*) *the affidavit should run thus:—*]

1. I did on the day of 19 , at (in the kingdom of, &c.), serve the defendants [*name of company*] which is a corporate body according to the law of [*name of country*] with notice, &c. [*as above*] by delivering the same to [the Secretary, *or other head officer, as the case may be*] at [*place of service*] the principal place of business of the said defendants.

No. 6.—*Personal Service of Originating Summons.*

[*Title and commencement as in Form No.* 1.]

1. I did on the day of 19 , at [*place of service*] personally serve C. D. the defendant [*or* respondent] herein with a true copy of the originating summons in this action [*or* matter] which appeared to me to have been regularly issued out of the Central Office of the Supreme Court [*or* the Manchester *or* Liverpool] District Registry of the High Court of Justice against the defendants [*or* respondents. *If the names do not appear in the title they should be here stated*] on the application of the plaintiffs [or applicants, *naming them if not stated in title*] and which was dated the day of 19 .

No. 7.—*Service of Notice of Judgment or Order* (Ord. 16, r. 40).

[*Title and commencement as in Form No.* 1.]

1. I did on the day of 19 , at [*place of service*] serve G. H. with notice of the judgment [*or* order] made in this action dated the day of 19 , which said judgment is now produced and shown to me marked A by delivering to and leaving with the said G. H. personally. [*If the person served is an infant or person of unsound mind not so found, one of the following forms must be followed at this point:*—

(*a*) Leaving with J. K. the father [*or* guardian] of the said G. H. who is an infant [*or* person of unsound mind not so found by inquisition]:—

(*b*) Leaving with L. M. the person with whom the said G. H. resides [*or* under whose care the said G. H. is]:—

If the person served is a lunatic the form should run:—leaving with N. O. the committee of the said G. H. who is a lunatic]:—
a true copy of the said judgment [*or* order].

2. At the time of the said service the said copy judgment [*or* order] so served as aforesaid had indorsed thereon a memorandum in the words following, that is to say:—

Take notice that from the time of the service of this notice on you, you will be bound [*or, in case of an infant, &c.* the said G. H. will be bound] by the proceedings in the above action in the same manner as if you [*or* the said G. H.] had been originally made a party thereto, and that you may on entering an appearance at the Central Office, Royal Courts of Justice, Strand, London [or the District Registry of the High Court at] attend the proceedings under the within-mentioned judgment, and that you may within one month after service of this notice apply to the Court to add to the judgment.

3. The said G. H. is one of the residuary legatees of [*or as the case may be*].

4. [*Show means of knowledge*].

No. 8.—*Substituted Service by Post.*

[*Title and commencement as in Form No.* 1.]

1. That I did on the day of 19 , serve the above-named defendant C. D. with a true copy of the writ of summons in this action and a true copy of the order of Master [*or* Mr. Justice] for substituted service herein, by posting the same at the post office at in a prepaid letter or envelope addressed to the said defendant at pursuant to the said order.

2. That the said writ of summons appeared to me to have been regularly issued out of the [Central Office of the Supreme Court *or* the District Registry of the High Court of Justice] against the above-named defendant at the suit of the above-named plaintiff, and was dated the day of , 19 .

3. I did on the day of 19 , indorse on the said writ the day of the month and the week of the said service on the said defendant.

No. 9.—*Service of Notice of Writ by Advertisement* (Ord. 9, r. 2).

[*Title and commencement as in Form No.* 1.]

1. That I did on the day of 19 , serve the above-named defendant C. D. with notice of the writ of summons in this action and of the order for service by advertisement dated the day of , 19 , by causing to be inserted once in [*names of paper or papers as ordered*] an advertisement in the words following, namely:—

[*Title, Reference Number, &c.*]

To the above-named defendant, C. D.

Take notice that this action was on the day of , 19 , commenced against you, and that the plaintiff by his writ of summons claims [*here copy the claim indorsed on the writ*].

And take notice that the Court has, by order dated the day of , 19 , authorised service of the said writ of summons on you by the insertion of this notice once in [*names of paper or papers as ordered*].

And further take notice that you are required within [*number of days allowed by order*] days after the insertion of this advertisement, inclusive of the day of such insertion, to cause an appearance to be entered for you at [the Central Office, Royal Courts of Justice, Strand, London, *or*, the District Registry of the High Court at], and that in default of your so doing the plaintiff may proceed with this action, and judgment may be given against you in your absence.

2. The advertisement aforesaid appeared in the [*name of paper*] on the day of , 19 , and in the [*name of paper*] on the day of [*as the case may be*].

[Note.—Indorsement of the writ with memorandum of the time of service under Ord. 9, r. 15, is not required when service is by advertisement (*Davies* v. *Lound*, W. N. (85) 54).]

No. 10.—*Personal Service of Judgment or Order.*

[*Title and Commencement as in Form No.* 1.]

1. That I did on the day of , 19 , at personally serve the above-named defendant C. D. [*or, as the case may be*] with a true copy of the order [judgment] dated in this action, and at the same time I produced and showed to the said C. D. the original order [judgment] duly passed and entered.

2. The copy of the said order [judgment] so served as aforesaid had indorsed thereon when so served the words following, that is to say: "If you the within-named C. D. neglect to obey this order [judgment] by the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same order [judgment]."

No. 11.—*Service of Notice to Produce or Admit.*

[*Title and Commencement as in Form No.* 1.]

I did on the day of , 19 , serve the above-named with a notice to [produce *or* admit] in this action a true copy whereof is hereto annexed and marked A by delivering the same to and leaving it with at h office or place of business situate at in the of .

No. 12.—*Service of Notice to Produce and Admit.*

1. I did on the day of , 19 , between the hours of and serve the above-named with a notice to produce in this action a true copy whereof is hereto annexed and marked A by delivering the same to and leaving it with at h office or place of business situate at in the of .

2. I did also on the day of aforesaid between the hours of and serve the said with a notice to admit in this action a true copy whereof is hereto annexed and marked B by delivering the same to and leaving it with at h office or place of business as aforesaid.

3. The notice to produce mentioned and referred to in the said notice to admit is the notice to produce a copy whereof is hereto annexed and marked A.

Affidavit of Service of Ordinary Summons.—See Part II., No. 23, *infra*.

Affidavit on Application for leave to serve out of the Jurisdiction.—See Ord. 11, r. 1 (n.) "Affidavit in support."

PART II.—NOTICES, &c.

No. 2.—*Notice of Counterclaim* (Ord. 21, r. 12).

"To the within-named X. Y.

"Take notice that if you do not appear to the within counterclaim of the within-named C. D. within eight days from the service of this defence and counterclaim upon you, you will be liable to have judgment given against you in your absence.

"Appearance to be entered at ."

No. 5.—*Confession of Defence* (Ord. 24, r. 3).

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [*or*, of the defendant's further defence].

No. 6.—*Interrogatories* (Ord. 31, r. 4).

19 . [*Here put letter and number.*]

In the High Court of Justice.
Division.

Between A. B., plaintiff,
and
C. D., E. F., and G. H., defendants.

Interrogatories on behalf of the above-named [*plaintiff*, or *defendant C. D.*] for the examination of the above-named [*defendants E. F.* and *G. H.*, or *plaintiff*].

1. Did not, &c.
2. Has not, &c.

&c. &c. &c.

[*The defendant E. F. is required to answer the interrogatories numbered .*]
[*The defendant G. H. is required to answer the interrogatories numbered .*]

No. 7.—*Answer to Interrogatories* (Ord. 31, r. 9).

[*Title as in No. 6, supra.*]

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

No. 8.—*Affidavit as to Documents* (Ord. 31, r. 13).

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto [*state grounds of objection*].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when, and what has become of them, and in whose possession they now are*].

5. According to the best of my knowledge, information, and belief I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing,

or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

[NOTE.—This form has been altered to accord with the official form now in use.]

No. 9.—*Notice to produce Documents* (Ord. 31, r. 16.)

Take notice that the [*plaintiff* or *defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim*, or *defence*, or *affidavit, dated the day of* 19].

Describe documents required.

X.Y., Solicitor to the .

To Z., Solicitor for .

No. 10.—*Notice to inspect Documents* (Ord. 31, r. 17).

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [*except the deed numbered in that notice*] at [*insert place of inspection*] on Thursday next the instant between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff* or *defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of 19 , on the ground that [*state the ground*] :—

No. 11.—*Notice to admit Documents* (Ord. 32, r. 3).

Take notice that the plaintiff [*or* defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or* plaintiff], his solicitor or agent, at , on , between the hours of ; and the defendant [*or* plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c. (Signed)

G. H., solicitor [*or* agent] for plaintiff [*or* defendant].

To E. F., solicitor [*or* agent] for defendant [*or* plaintiff].

[*Here describe the documents, the manner of doing which may be as follows :—*]

ORIGINALS.

Description of Documents.	Dates.
Deed of Covenant between A. B. and C. D. first part, and E. F. second part	January 1, 1868.
Indenture of lease from A. B. to C. D.	February 1, 1868.
Indenture of release between A. B. and C. D. first part, &c.	February 2, 1868.
Letter—defendant to plaintiff	March 1, 1868.
Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London	December 3, 1867.
Memorandum of agreement between C. D., captain of said ship, and E. F.	January 1, 1868.
Bill of exchange for 100*l.* at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H.	May 1, 1869.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of A. B. in the parish of X.	January 1, 1868.	
Letter—plaintiff to defendant	February 1, 1868.	Sent by General Post, February 2, 1868.
Notice to produce papers	March 1, 1868.	Served March 2, 1868, on defendant's attorney by E. F. of .
Record of a judgment of the Court of Queen's Bench in an action *F. S.* v. *F. N.*	Trinity Term, 10th Vict.	
Letters patent of King Charles II. in the Rolls Chapel	January 1, 1680.	

No. 12.—*Notice to admit Facts* (Ord. 32, r. 5).

Take notice that the plaintiff [*or* defendant] in this cause requires the defendant [*or* plaintiff] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the

defendant [*or* plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G. D., solicitor [*or* agent] for the plaintiff [*or* defendant].

To E. F., solicitor [*or* agent] for the defendant [*or* plaintiff].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1890.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1896.
5. That Julius Smith never was married.

No. 13.—*Admission of Facts, pursuant to Notice* (Ord. 32, r. 5).

The defendant [*or* plaintiff] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or* plaintiff] on any other occasion, or by anyone other than the plaintiff [*or* defendant, *or party requiring the admission*].

Delivered, &c.

E. F., solicitor [*or* agent] for the defendant [*or* plaintiff].

To G. H., solicitor [*or* agent] for the plaintiff [*or* defendant].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

No. 14.—*Notice to Produce* (*general form*) (Ord. 32, r. 8).

Take notice, that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this , and particularly .

Dated the day of , 19 .

To the above-named
h solicitor *or* agent .

(Signed) , of agent for , solicitor for the above-named .

No. 15.—*Issue* (Ord. 34, r. 9).

Whereas A.B. affirms, and C.D. denies [*here state the question or questions of fact to be tried*], and it has been ordered by the Hon. Mr. Justice that the said question shall be tried [*here state mode of trial, whether with or without a jury*], therefore let the same be tried accordingly.

No. 16.—*Notice of Trial* (Ord. 36, r. 13).

Take notice of trial of this [*or* of the issues in this ordered to be tried] [*or as the case may be*] in [*or as the case may be*], for the day of next.

X.Y., plaintiff's solicitor [*or as the case may be*].

Dated .

To Z., defendant's solicitor [*or as the case may be*].

[See *Harris* v. *Gamble*, 7 C. D. 877.]

No. 16A.—*Notice of Trial without Pleadings* (Ord. 18A).

Take notice of trial of this cause without pleadings in [*as may be ordered under Ord.* 36, *r.* 1] for the day of next.

X.Y., plaintiff's solicitor [*or as the case may be*].

Dated .

To Z., defendant's solicitor [*or as the case may be*].

[R. S. C. Nov. 1893.]

No. 17.—*Certificate of Officer after Trial with a Jury* (Ord. 36, r. 42).

I certify that this was tried before the Honourable Mr. Justice , with a special jury of the county of , on the 12th and 13th days of November, 19 .

The jury found [*state findings*].

The Judge directed that judgment should be entered for the plaintiff for £ , with costs [*as the case may be*].

A.B., [*Title of Officer.*]

The day of , 19 .

No. 18.—*Notice of Motion* (Ord. 52).

Take notice, that the court will be moved on day, the day of , 19 , at o'clock in the forenoon, or so soon thereafter as counsel can be heard, by that .

Dated the day of , 19 .

(Signed) of agent for .

To , solicitor for the .

[See D. C. F. 38.]

No. 18A.—*Notice of Appeal from Master* (Ord. 54, r. 21).

Take notice, that the above-named plaintiff [*or* defendant] intends to appeal against the decision of Master given on the day of 19 , ordering [*or* refusing to order] that .

And further take notice, that you are required to attend before the Judge in Chambers at the Central Office, Royal Courts of Justice, Strand, on day, the day of 19 , at o'clock, in the noon, on the hearing of an application by the said plaintiff [*or* defendant], that .

[And further take notice that it is the intention of the said to attend by counsel.]

Dated the day of 19 .

Solicitor for the .

No. 19.—*Notice of Discontinuance* (Ord. 26, r. 1).

Take notice, that the plaintiff hereby (1) (2)

Dated the day of 19 .

(Signed) [*&c., as in* Form 18, *supra.*]

(1) "Wholly discontinues this action," or "withdraws so much of his claim in this action as relates to," &c.

(2) If not against all the defendants add, "as against the defendant."

No. 21.—*Notice of Renewal of Writ of Execution* (Ord. 42, r. 20).

Take notice, that the writ of issued in this action directed to the sheriff of and bearing date the day of 19 , has been renewed for one year from the day of 19 .

Dated the day of 19 .

(Signed) [*&c., see* Form 18, *supra.*]

To the Sheriff of .

No. 23.—*Affidavit of Service of Summons* (Ord. 54, r. 5; Ord. 67, r. 2; Ord. 13, r. 2).

I , of , solicitor for the above-named , make oath and say as follows:—

I did on the day of 19 , before the hour of *six* (1) in the *after*noon, serve *solicitor for* the above-named in this action with a true copy of the summons now produced and shown to me marked A, by leaving [*or* by posting it at the post office at in a duly registered envelope addressed to the said] at the of the said situate being the address for service in this action [with their clerk *or* his servant, *or as may be* there].

Sworn at this day of 19 ,
Before me .

This affidavit is filed on behalf of the .

(1) Two, if served on Saturday.

No. 23c.—*Affidavit on Application for Substituted Service* (Ord. 10).

I, ; of , clerk to , of , solicitor for the above-named plaintiff, make oath and say as follows:—

1. Having been directed by to serve the above-named defendant with a copy of the writ of summons in this action which appeared to me to have been regularly issued out of and under the seal of the Central Office of the Supreme Court of Judicature by the above-named plaintiff against the above-named defendant, and dated the day of 190 , which said writ and copy were subscribed and endorsed in the manner and form prescribed by the Rules of the Supreme Court, and a true copy of which said writ is now produced and shown to me, marked A, I did on the day of 190 , attend for the purpose of serving a copy of the said writ at [*describe efforts to effect service, as to which see Ord.* 10 (*n.*) "*Essential Preliminaries to Application.*"]

I have made all reasonable efforts and used all due means in my power to serve the said defendant personally with a true copy of the said writ, but I have not been able to do so.

Sworn, &c.

This affidavit is filed on behalf of the .

No. 25.—*Affidavit in support of Garnishee Order* (Ord. 45, r. 1).

In the High Court of Justice.

Division. 19 , No.

Between , Judgment Creditor,

and , Judgment Debtor.

I, , of , the above-named judgment creditor [*or* solicitor for the above-named judgment creditor], make oath and say as follows:—

1. By a judgment of the Court given in this action, and dated the day of 19 , it was adjudged that I [*or*, the above-named judgment creditor] should recover against the above-named judgment debtor the sum of £ , and costs to be taxed, and the said costs were by a master's certificate dated the day of 19 , allowed at £ .

2. The said still remains unsatisfied to the extent of and interest amounting to £ .

3. (1) is indebted to the judgment debtor , in the sum of £ or thereabouts.

4. The said is within the jurisdiction of this Court.

Sworn [*&c. see* Form 23, *supra*].

[NOTE.—*Paragraph* 3. Provided the grounds of belief are stated, it is sufficient if this paragraph runs, "I am informed and verily believe that A. B. is indebted," &c. But an affidavit on information and belief is insufficient unless it states the grounds on which the information and belief are based (*Lumley* v. *Osborne*, [1901] 1 K. B. 532). It is not necessary to state the amount of the debt sought to be attached (*Vinall* v. *De Pass*, [1892] A. C. 90; *Lucy* v. *Wood*, W. N. (84) 58; and see *De Pass* v. *Capital and Industries Corpn.* [1891], 1 Q. B. 216, cited Ord. 45, r. 1 (n.), "Affidavit by himself," &c.).

Paragraph 4. If garnishees are partners, the words should be "carry on business within the jurisdiction."]

(1) Name, address, and description of garnishee.

No. 27.—*Affidavit as to Stock under Ord. XLVI.* (Ord. 46, r. 4).

In the matter of [*here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent, sufficiently to identify the document*];
and

In the matter of the Act of Parliament, 5 Vict. c. 5.

I, , of , make oath and say that according to the best of my knowledge, information, and belief, I am [*or if the affidavit is made by the solicitor*, A. B., of is] beneficially interested in the stock comprised in the [*settlement, will, &c.*] above-mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of A. B., whose address is [*state address for service*].

[NOTE.—The note stating on whose behalf the affidavit is filed should now be *indorsed* on the affidavit: see Ord. 38, r. 10; Ord. 46, r. 5. For form of notice to be annexed to this affidavit, see No. 22, *supra*.]

No. 28.—*Notice of Claim to Goods taken in Execution* (Ord. 57, r. 16).

Take notice, that A. B. has claimed the goods (or certain goods) [*where only certain goods are claimed here enumerate them*] taken in execution by the sheriff of , under the warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said A. B. to the said goods and give notice thereof in writing to the said sheriff within four days from the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said A. B. to the said goods and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &c.

(Signed)
Sheriff of .

To the plaintiff.

No. 29.—*Notice of Plaintiff of Admission or Dispute of Title of Claimant* (Ord. 57, r. 16).

Take notice that I admit (*or*, dispute) the title of A. B. to the goods [*or*, to certain of the goods, namely (*set them out*)] seized by you under the execution issued under the judgment in this action.

(Signed) Plaintiff
or
Solicitor.

To the sheriff of
and his officers.

No. 30.—*Notice of Change of Solicitor and Agent* (Ord. 7, r. 3).

Take notice that [*new solicitor's name or names*], of , has [or have] been appointed to act as the solicitor of the above-named [*plaintiff or defendant* (*naming the defendant or defendants if more than one*)] in this action, in the place of [*original solicitors*], and that the undersigned , of , has [or have] been appointed to act as the London agents of the said [*new solicitors*] in this action in the place of [*original agents*].

The address for service (of the above-named) is .
Dated this day of 190 .

Yours, &c.,
[*Signatures of new agents*],
Agents for .

To the above-named defendant [or plaintiff] or his [or their] solicitors.

No. 31.—*Notice of Change of Town Solicitor* (Ord. 7, r. 3).

Take notice that [*name and address of new solicitor*], of , has [or have] been appointed to act as the solicitor of the above-named ["*plaintiff*" or "*defendant*" (*if for one or more of several defendants, naming the defendant or defendants*)], in the place of [*name of original solicitor*].

The address for service (of the above-named) is .
Dated this day of 19 .

Yours, &c.,
[*Signature of new solicitor*].

To the above-named defendant [or plaintiff] or his [or their] solicitor.

No. 32.—*Notice of Change of Town Agent* (Ord. 7, r. 3).

Take notice that [*newly appointed agent*] of , has [or have] been appointed by the undersigned [*plaintiff's* (*or defendant's*) *solicitors*], of , the solicitors of the above-named [*plaintiff or defendant*], to act as his [or their] London agents in this action, in the place of [*names of original agents*].

The address for service (of the above-named) is .
Dated this day of 19 .

Yours, &c.,
[*Signatures of newly appointed agents*].

To the above-named defendant [or plaintiff] or his [or their] solicitor.

[APPENDIX C.]

FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORD. 19, R. 5.

SECT. I.

19 . [*Here put letter and number.*]

In the High Court of Justice.
Division.
Writ issued the of 19 .
Between A. B. . . . . Plaintiff,
and
C. D. . . . . Defendant.

Statement of Claim.

The plaintiff, *&c.*
[*or*]
The plaintiff's claim is, *&c.*
[*To be filled up in manner exemplified in the following forms.*]
The plaintiff claims [*as in following forms*].
(Signed)
Delivered the of 19 .

SECT. III.—*Actions within the exclusive Cognizance of the Probate, Divorce and Admiralty Division. Sect.* 34 *of the principal Act.*

No. 1.

The plaintiff is cousin-german and one of the next of kin of M. N., late of No. 1, High Street, Putney, in the county of Surrey, grocer, who died on or about the 1st of March, 19 , a widower without child, parent, brother or sister, uncle or aunt, nephew or niece.

The plaintiff claims:

A grant to him of letters of administration of the personal estate and effects of the said deceased.

(Signed)
Delivered

No. 2.

The plaintiff is the executor appointed under the will of C. T., late of Bicester, in the county of Oxford, gentleman, who died on the 20th of January, 1883, the said will bearing date the 1st of January, 1875, and a codicil thereto, the 1st of October, 1875.

The plaintiff claims:

That the Court shall decree probate of the said will and codicil in solemn form of law.

(Signed)
Delivered

[APPENDIX D.]

FORMS OF DEFENCE TO BE USED PURSUANT TO ORD. 19, R. 5.

SECT. I.—1. *General Form.*

19 . No. .

In the High Court of Justice.
Division.

Between , plaintiff,
and
, defendant.

Defence.

The defendant says that:—

1. } [*To be filled up in the manner exemplified in the following*
2. } *forms.*]
3. }

(Signed)
Delivered

Counterclaim.

The defendant says that:—

1. } [*To be filled up in the manner exemplified in the following*
2. } *forms.*]

The defendant counterclaims.

(Signed)
Delivered

Defence and Counterclaim.

Defence.

The defendant says:—

1. } [*To be filled up.*]
2. }

Counterclaim.

The defendant repeats paragraph 2 of his defence, and says that:—

3. } [*To be filled up.*]
4. }

The defendant counterclaims.

(Signed)
Delivered

2. *Form of Title where new Party brought in.*

19 . No. .

In the High Court of Justice.
Division.

Between A. B., plaintiff,
and
C. D., defendant
(By original action),

And between the said C. D., plaintiff,
and
The said A. B. and E. F., defendants
(By counterclaim).

SECT. III.—*Forms to be used in Actions within the exclusive cognizance of the Probate, Divorce and Admiralty Division: Appendix C., Sect. III.*

No. 1.

The defendant is nephew and next of kin of the deceased, being son of G. B., the brother of the deceased, who died in his lifetime.

The defendant claims:—

That the Court pronounce that the defendant is the nephew and next of kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

(Signed)
Delivered

No. 2.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26.

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, [*or*] of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims:—

1. That the Court will pronounce against the said will and codicil propounded by the plaintiff:
2. That the Court will decree probate of the will of the deceased, dated the 1st of January, 1873, in solemn form of law.

(Signed)
Delivered

[APPENDIX E.]

FORMS OF REPLY, &c. TO BE USED PURSUANT TO ORD. 19, R. 5.

[See Ord. 23, R. S. C. July, 1902.]

SECT. I.

19 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between , plaintiff,
and
, defendant.

Reply.

The plaintiff as to the defence says that—
1.
2.

The plaintiff as to the counterclaim says that—
1.
2.

(Signed)
Delivered

[APPENDIX F.]

FORMS OF JUDGMENT.

No. 6.—*Judgment at Trial by Judge without a Jury* (Ord. 40, r. 5).

[*If in Chancery Division, name of Judge.*]

This action coming on for trial [the day of and] this day before in the presence of counsel for the plaintiff and the defendants [*or, if some of the defendants do not appear*, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of filed the day of appears,] upon hearing the probate of the will of , the answers of the defendants C. D., E. F., and G. H. to interrogatories, the admission in writing, dated and signed by [Mr. the solicitor for] the plaintiff A. B. and by [Mr. the solicitor for] the defendant C. D., the affidavit of filed the day of , the affidavit of filed the day of the evidence of taken on their oral examination at the trial, and an exhibit marked X, being an indenture dated, *&c.* and made between [*parties*], and what was alleged by counsel on both sides: This Court doth declare, *&c.*

And this Court doth order and adjudge, *&c.*

No. 7.—*Judgment after Trial with a Jury.*

15th November, 19 .

The action having on the 12th and 13th November, 19 , been tried before the Honourable Mr. Justice with a special jury of the county of , and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice having ordered that judgment be entered for the plaintiff for £ and costs [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant £ and £ for his costs [*or*, that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £ for his costs of defence, *or as the case may be*].

No. 10.—*Judgment upon Motion for Judgment* (Ord. 40).

30th November, 19 .

This day, before Mr. X. of counsel for the plaintiff [*or as the case may be*], moved on behalf of the said [*state judgment moved for*], and the said Mr. X. having been heard of counsel for and Mr. Y. of counsel for the Court adjudged.

No. 11.—*Judgment after Trial by Court without Jury* (Ord. 36, r. 39).

Dated and entered the day of , 19 .

This action having on the day of , 19 , been tried before , and the said on the day of 19 , having ordered that judgment be entered for the for £ ,

It is this day adjudged that the recover from the £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of 19 .

[NOTE.—These judgments are now *dated and entered* as of the day they are pronounced in Court. See Ord. 41, r. 3.]

No. 11A.—*Judgment of Dismissal* (Ord. 36, r. 32).

Dated and entered the day of , 19 .

This action having on the day of , 19 , *been called on for hearing before , and the plaintiff having failed to appear, and the defendant having thereupon become entitled under Ord.* 36, *r.* 32, *to judgment dismissing the action and the said having ordered that judgment be entered accordingly.*

Therefore it is adjudged that this action do stand dismissed out of this Court with costs.

And it is further adjudged that the defendant recover against the plaintiff his costs to be taxed.

The above costs have been taxed, &c.

[NOTE.—As to this form and its effect see *Armour* v. *Bate*, (1891) 2 Q. B. 233, cited Ord. 36, r. 32 (n.). As to necessity for entering up the costs before proceeding on such a judgment, see *Ex parte Crump*, 7 Times Rep. 556, cited Ord. 42, r. 17. See also Seton, 138.]

No. 12.—*Judgment in Pursuance of Order* (Ord. 41, r. 7).

Pursuant to the order of dated , 19 , whereby it was ordered , and default having been made,

It is this day adjudged that the plaintiff recover against the said defendant £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of 19 .

No. 14.—*Judgment for Defendant's Costs on Discontinuance* (Ord. 26, r. 3).

The day of , 19 .

The plaintiff having by a notice in writing dated the day of , 19 , wholly discontinued this action [*or* withdrawn his claim in this action for, *or* withdrawn so much of his claim in this action as relates to—*or as the case may be*],

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of , 19 .

[*Cf.* Seton, p. 128.]

No. 17.—*Judgment where no Judgment entered at Trial by Jury* (Ord. 40, r. 2).

Dated and entered the day of , 19 .

This action having on the 19 , been tried before and a jury of the of , and the jury having found and the not having thought fit to order any judgment to be entered,

Now on motion before the Court for judgment on behalf of the the Court having ,
It is this day adjudged that the recover against the the sum of £ , and costs to be taxed.
The above costs have been taxed and allowed at £ , as appears by a Master's Certificate dated the day of , 19 .
[Judgment entered the day of 19 .]

[See note to No. 11, *supra*.]

No. 18.—*Judgment on Motion after Trial of Issue* (Ord. 40, r. 7).

Dated and entered the day of , 19 .
The issues *or* questions of fact arising in this action [*or* cause *or* matter] by the order dated the day of ordered to be tried before having on the day of been tried before and the having found . Now on motion before the Court for judgment on behalf of the , the Court having .
It is this day adjudged that the recover against the the sum of £ and costs to be taxed.
The above costs have been taxed and allowed at £ , as appears by a Master's Certificate dated the day of 19 .
[Judgment entered the day of , 19 .]

[See note to No. 11, *supra*.]

[NOTE.—For forms of judgment on Bankruptcy Order of Discharge, see Judgment Table, No. 35; on Petition of Right, *ib.* No. 36; against Executor or Administrator, *ib.* No. 38; and for Mandatory Injunction, and Mandamus, *ib.* Nos. 39, 40, Part IX., Vol. II., Annual Practice.

[APPENDIX G.]

PART I.—FORMS OF PRÆCIPE (Ord. 42, r. 12).

No. 1.—*Of Fieri Facias* (Ord. 43).

19 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Seal a writ of *fieri facias* directed to the sheriff of against C. D. of in the county of upon a judgment [*or* order

dated the day of for the sum of £ debt and £ costs and interest, *&c.*

Indorsed to levy £ and interest thereon at £4 per centum per annum from the (*date*) and costs of execution.

X. Y., solicitor for [*party on whose behalf writ is to issue*].

[NOTE.—Official form prescribed by Practice Masters.]

No. 2.—*Of Elegit* (Ord. 43).

[*Title as in No.* 1, *supra.*]

Seal a writ of *elegit* directed to the sheriff of against of in the county of for not paying to A. B. the sum of £ together with interest thereon from the day of [and the sum of £ for costs], with interest thereon at the rate of £4 per centum per annum.

Judgment [*or* order] dated day of 19 .

[Taxing Officer's Certificate, dated day of 19 .]

X. Y., solicitor for .

No. 3.—*Of Venditioni Exponas* (Ord. 43).

[*Title as in No.* 1, *supra.*]

Seal a writ of *venditioni exponas* directed to the sheriff of to sell the goods and of C. D. taken under a writ of *fieri facias* in this action tested day of .

X. Y., solicitor for .

No. 4.—*Of Fieri Facias de Bonis Ecclesiasticis* (Ord. 43, r. 5).

[*Title as in No.* 1, *supra.*]

Seal a writ of *fieri facias de bonis ecclesiasticis* directed to the bishop [*or* archbishop, *as the case may be*] of to levy against C. D. the sum of £ .

Judgment [*or* order] dated day of 19 .

[Taxing Officer's Certificate, dated day of 19 .]

X. Y., solicitor for

No. 5.—*Of Sequestrari Facias de Bonis Ecclesiasticis* (Ord. 43, r. 5).

[*Title as in No.* 1, *supra.*]

Seal a writ of *sequestrari facias* directed to the Bishop of against C. D. for not paying to A. B. the sum of £ .

No. 6.—*Of Writ of Sequestration* (Ord. 43).

[*Title as in No.* 1, *supra.*]

Seal a writ of sequestration against C. D. for not at the suit of A. B. directed to [*names of commissioners*].
Order dated day of 19 .

No. 7.—*Of Writ of Possession* (Ord. 47).

[*Title as in No.* 1, *supra.*]

Seal a writ of possession directed to the sheriff of to deliver possession to A. B. of .
Judgment dated day of 19 .

No. 7A.—*Of Possession and Fi. Fa. combined.*

[*Title as in No.* 1, *supra.*]

Seal a writ of possession and *fi. fa.* combined, directed to the sheriff of to deliver possession to the (1) of the land and premises in the (2) herein mentioned.
And also to levy against , of , in the county of , the sum of (3) and interest at the rate of £4 per centum per annum on the said amount from the day (4)
(5) dated the day of 19 .
[Taxing Master's Certificate dated the day of 19 .]
Dated the day of 19 .

(Signed)
Address
Solicitor for the

[This form has been settled by the Practice Masters under Ord. 61, r. 33. See Ord. 47, r. 3.]

(1) "Plaintiff," or as may be.
(2) "Judgment" or "order." If for part only of premises, say "described as."
(3) "£ debt, and £ costs," or as may be.
(4) If part paid, add "indorsed to levy £ and interest from," &c., as indorsed on writ.
(5) "Judgment" or "order."

No. 10.—*Of Writ of Attachment* (Ord. 44).

[*Title as in No.* 1, *supra.*]

Seal in pursuance of order dated day of an attachment directed to the sheriff of against C. D. for not delivering to A. B. .

No. 11.—*Of Distringas against Ex-Sheriff* (Ord. 43, r. 5).

[*Title as in No.* 1, *supra.*]

Seal a writ of *distringas nuper vicecomitem quod venditioni exponat* directed to the sheriff of to sell the goods and of taken under a writ of *fieri facias* in this action tested the day of 19 .

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the .

No. 12.—*Of Inquiry* (Ord. 13, r. 5).

[*Title as in No.* 1.]

Seal a writ of inquiry directed to the sheriff of to assess the damages in this action.

Judgment dated .

Dated, *&c.* [*as in Form* 11, *supra*].

No. 16.—*Of Habeas Corpus ad Testificandum.*

[*Title as in No.* 1, *supra*].

Seal in pursuance of order dated , a writ of *habeas corpus ad testificandum* directed to the , to bring before .

Dated, *&c.* [*as in Form* 11, *supra*].

No. 17.—*Of Commission to Examine Witnesses* (Ord. 37, r. 6).

[*Title as in No.* 1, *supra.*]

Seal in pursuance of order dated , a writ in the nature of a mandamus or commission to examine witnesses directed to

Dated, *&c.* [*as in Form* 11, *supra*].

No. 19.—*Of Amended Summons* (Ord. 28, r. 1).

[*Title as in No.* 1, *supra.*]

Amend in pursuance of order [*or* fiat] dated the writ of summons in this action by (1) .

Dated, *&c.* [*as in Form* 11, *supra*].

(1) Set out amendments when required.

No. 20.—*Of Renewed Summons* (Ord. 8).

[*Title as in No.* 1, *supra.*]

Seal in pursuance of order dated , a renewed writ of summons in this action, indorsed as follows .
Dated, *&c.* [*as in Form* 11, *supra*].

No. 21.—*Of Subpœna* (Ord. 37, r. 26).

[*Title as in No.* 1, *supra.*]

Seal writ of subpœna , on behalf of the directed to . Returnable .
Dated, *&c.* [*as in Form* 11, *supra*].

No. 22.—*Entry of Action for Trial* (Ord. 36, r. 20).

[*Title as in No.* 1.]

Enter this action for trial.
Dated the day of , 19 .
(Signed)
(Address)

No. 23.—*Entry of Appeal* (Ord. 58, r. 8).

[*Title as in No.* 1.]

Enter this appeal from the order [*or* judgment] of in this action, dated the day of , 19 .
Dated, *&c.* [*as in Form* 22, *supra*].

No. 24.—*Entry for Argument generally.*

[*Title as in No.* 1.]

Set down for argument the .
Dated, *&c.* [*as in Form* 22, *supra*].

No. 25.—*Entry of Special Case* (Ord. 34, r. 5).

[*Title as in No.* 1.]

Set down the dated the day of , 19 , of Mr. the referee in this for hearing as a special case.
Dated, *&c.* [*as in Form* 22, *supra*].

No. 26.—*Memorandum of Service of Notice of Judgment* (Ord. 16, r. 42).

[*Heading as in Form* 1.]

Enter memorandum of service of notice of judgment made in this action, and dated the day of , 19 , on the undermentioned persons, viz.:—

Name of Party Served.	Date of Service.

Dated, *&c.* [*as in Form* 22, *supra*].

No. 26A.—*Certificate of Entry of Memorandum* (Ord. 16, r. 42).

[*Heading as in Form* 1.]

These are to certify that a memorandum of service of notice of the [judgment *or* order] made in this action, dated the day of , 19 , upon the undermentioned persons, viz., , was duly entered on the day of , 19 .

[NOTE.—This form is not part of the Appendix to the Rules.]

No. 27.—*Search* (Ord. 61, r. 23).

[*Heading as in Form* 1.]

Search for .
Dated the day of , 19 .
(Signed)
(Address)
Agent for .
Solicitor for .

No. 28.—*Memorandum on Notice of Judgment* (Ord. 16, r. 43).

Take notice that from the time of the service of this notice you [or *as the case may be*, the infant *or* person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [*or* the said infant *or* person of unsound mind] had been originally made a party, and that you [*or* the said infant *or* person

of unsound mind] may, on entering an appearance at the Central Office, Royal Courts of Justice, Strand, London, attend the proceedings under the within-mentioned judgment [*or* order] and that you [*or* the said infant *or* person of unsound mind] may within one month after the service of this notice apply to the Court to add to the judgment [*or* order].

[APPENDIX H.]

Forms of Writs (Ord. 42, r. 14).

[Note.—As to indorsement of address of execution debtor, see Ord. 42, r. 13 (n.), and *Morris* v. *Salberg*, there cited.]

No. 1.—*Writ of Fieri Facias* (Ord. 43).

In the High Court of Justice. 19 . B. No. .
Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

Edward the Seventh, by the grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith,

To the sheriff of greeting:

We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £ and also interest thereon at the rate of £ per centum per annum from the day of , (1) which said sum of money and interest were lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A. B. is plaintiff and C. D. defendant [*or* in a certain matter there depending intituled "In the matter of E. F." *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court, bearing date the day of adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of £ [costs] together with interest thereon at the rate of £4 per centum per annum from the day of (1) and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said A. B. in pursuance of the said judgment [*or* order, *as the case may be*]. And in what manner you shall

have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, *&c.*

Against Executor, &c.—For form of this writ, see Execution Table, "Fieri Facias," Vol. I., Part II., Annual Practice.

(1) Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be. [See now *Pyman* v. *Burt*, cited in note to Form 3, *infra*; *Boswell* v. *Coaks*, 57 L. J. Ch. 101.]

No. 1A.—*Writ of Fieri Facias against a Married Woman.*

[NOTE.—This form is not part of the Appendix to the Rules.]

EDWARD THE SEVENTH, *&c.* [*as in Form No.* 1].

We command you that of the goods and chattels of A. B. being her separate property in your bailiwick, you cause to be made the sum of £ , *and* £ *costs, and also interest thereon at the rate of* £ *per centum per annum from the* [date of judgment] *which said sums of money and interest were lately before us in our High Court of Justice in a certain action* [or matter] *there depending wherein* [parties' names] *by a judgment of our said Court bearing date the adjudged to be paid by the said A. B. to out of her separate property and not otherwise* [follow the terms of the judgment or order].

Witness, *&c.*

[NOTE.—See the forms given under Appendix F, No. 1A.]

No. 2.—*Fieri Facias on Order for Costs* (Ord. 42, r. 18).

[*Title as in No.* 1.]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1].

To the sheriff of greeting:

We command you, that of the goods and chattels of in your bailiwick you cause to be made the sum of £ for certain costs which by an order of our High Court of Justice dated the day of 19 , were ordered to be paid by the said to and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of £4 per centum per annum from the day of 19 , and that you have the said sum and interest before us in our said Court, immediately after the execution hereof, to be rendered to the said . And in what manner, &c. And have there then this writ.

Witness, *&c.*

Levy £ and £ for costs of execution, &c. and also interest on £ at £4 per centum per annum from the day of 19 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

Witness, *&c.*

This writ was issued by of agent for , solicitor for the .

The is a and resides at in your bailiwick.

No. 3.—*Writ of Elegit* (Ord. 43).

[*Title as in No.* 1, *supra.*]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1].

To the sheriff of greeting:

Whereas lately in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] there depending, wherein A. B. plaintiff and C. D. defendant [*or* in a certain matter there depending, intituled "In the matter of E. F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court made in the said action [*or* matter, *as the case may be*], and bearing date the day of , it was adjudged [*or* ordered, *as the case may be*] that C. D. should pay unto A. B. the sum of £ , together with interest thereon after the rate of £ per centum per annum from the day of , together also with certain costs as in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by , one of the taxing officers of our said Court, at the sum of £ , as appears by the certificate of the said taxing officer, dated the day of . And afterwards the said A. B. came into our said Court, and according to the statute in such case made and provided, chose to be delivered to him all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said C. D., or any one in trust for him, was seised or possessed of on the day of in the year of our Lord (1) or at any time afterwards, or over which the said C. D., on the said day of , or at any time afterwards, had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold to him the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ together with interest upon the said sums at the rate of £4 per centum per annum from the said day of shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and

hereditaments of copyhold or customary tenure, in your bailiwick as the said C. D., or any person or persons in trust for him, was or were seised or possessed of on the said day of (1) or at any time afterwards, or over which the said C. D. on the said day of (1), or at any time afterwards, had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums, and interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness, *&c.*

[This form has been altered in accordance with the Bankruptcy Act, 1883, s. 146 (which provides that a writ of elegit shall not extend to goods and chattels); and the decision of Field, J., in *Pyman* v. *Burt*, W. N. (84) 100, that interest runs on costs from the date of the judgment. Formerly interest was calculated from the date of the certificate of taxation. (*See* (n.) "Interest on Costs," under Ord. 65, r. 1.) As to the duty of the sheriff to file his return to this writ, see *Johns* v. *Pink*, (1900) 1 Ch. 307.]

(1) Date of judgment or order.

No. 4.—*Writ of Venditioni Exponas* (Ord. 43, r. 5).

[*Title as in No.* 1, *supra.*]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1].

To the sheriff of greeting:

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the* fieri facias *to the end*]. And on the day of you returned to us in the Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we, being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness, *&c.*

No. 5.—*Writ of Fieri Facias de Bonis Ecclesiasticis* (Ord. 43, r. 5).

[*Title as in No.* 1, *supra.*]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1].

To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of greeting:

We command you, that of the ecclesiastical goods of C. D., clerk in your diocese, you cause to be made £ which lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A. B. is plaintiff and C. D. is defendant [*or* in a certain matter there depending, intituled "In the matter of E. F.," *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said Court bearing date the day of , was adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to the said A. B., together with interest on the said sum of £ at the rate of £ per centum per annum, from the day of , and have that money, together with such interest as aforesaid, before us in our said Court immediately after the execution hereof, to be rendered to the said A. B., for that our sheriff of returned to us in our said Court on [*or* "at a day now past"] that the said C. D. had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said £ and interest aforesaid or any part thereof, and that the said C. D. was a benificed clerk (to wit) rector of rectory [*or* vicar of the vicarage] and parish church of in the said sheriff's county, and within your diocese [*as in the return*], and in what manner, *&c.* And have you there then this writ.

Witness, *&c.*

No. 6.—*Writ of Fieri Facias to the Archbishop de Bonis Ecclesiasticis during the Vacancy of a Bishop's See* (Ord. 43, r. 4).

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1]:

To the Right Reverend Father in God [*John*] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting:

We command you, that of the ecclesiastical goods of C. D., clerk in the diocese of which is within the province of Canterbury, as ordinary of that church, the episcopal see of now being vacant, you cause to be made [*&c., conclude as in the preceding form*].

No. 7.—*Writ of Sequestrari Facias de bonis Ecclesiasticis* (Ord. 43, r. 5).

[*Title as in No.* 1, *supra.*]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1]:

To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of greeting:

Whereas we lately commanded our sheriff of that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, *if after the return to a* fieri facias, *or* delivered, *if after the return to an* elegit, *&c., and in either case recite the former writ*]. And whereupon our said sheriff of on [*or* "at a day past"] returned to us in the division of our said Court of Justice, that the said C. D. was a beneficed clerk; that is to say, rector of the rectory [*or* vicar of the vicarage] and parish church of in the county of , and within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [*here follow the words of the sheriff's return*]. Therefore, we command you that you enter into the said rectory [*or* vicarage] and parish church of , and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said £ and interest aforesaid, of the rents, tithes, rentcharges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [*or* vicarage] and parish church of and to the said C. D. as rector [*or* vicar] thereof to be rendered to the said A. B., and in what manner, *&c.* And have you there then this writ.

Witness, *&c.*

No. 7A.—*Writ of Possession and Fi. Fa.*

[*Title as in No.* 1, *supra.*]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1]:

To the sheriff of greeting:

Whereas lately in our High Court of Justice by a (1) of the Division of the same Court, it was (2) that the (3) recover possession of all that (4) with the appurtenances in your bailiwick: Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said to have possession of the said land and premises with the appurtenances. And we further command you that of the goods and chattels of the said in your bailiwick, you cause to be made the sum of £ and also interest thereon at the rate of £4 per centum per annum, from the day of , which said sum of money and interest were in the said action by the (5) to be paid by the said to

together with certain costs in the said (6) mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ as appears by the certificate of the said taxing officer dated the day of . And that of the goods and chattels of the said in your bailiwick you further cause to be made the said sum of £ (7) together with interest thereon at the rate of £4 per centum per annum from the day of , and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said in pursuance of the said (8) . And in what manner you have executed this our writ make appear to us in our High Court of Justice immediately after the execution thereof. And have there then this writ.

Witness, *&c.*

This writ was issued by of agent for of solicitor for the who resides at .

The defendant is a and resides at in your bailiwick.

Cause possession to be delivered to the (9) of the within-mentioned premises (10) .

And levy £ and interest at £4 per centum per annum, from the day of 19 , and £ for costs of execution, besides poundage fees and expenses of execution.

[This form has been settled by the Practice Masters under Ord. 61, r. 33. See Ord. 47, r. 3.]

(1) "Judgment" or "order."
(2) "Adjudged" or "ordered."
(3) "Plaintiff," or as may be.
(4) Describe premises as in judgment or in order.
(5) "Judgment therein adjudged" or "order dated the day of ordered."
(6) "Judgment" or "order."
(7) Costs.
(8) "Judgment" or "order."
(9) "Plaintiff," or as may be.
(10) If for part only of premises, say "described as."

No. 12.—*Writ of Attachment* (Ord. 44).

[*Title as in No.* 1, *supra.*]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1]:

To the sheriff of , greeting:

We command you to attach C. D. so as to have him before us in the Division of our High Court of Justice wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, *&c.*

NOTICE TO SHERIFF.—*This writ, if issued for default in payment of money, is subject to the following limitation:—*

If under sect. 4 of the Debtors Act, 1869, it does not authorise imprisonment for any longer period than One Year.

INDORSEMENT.—*This writ was issued by, &c., solicitor for the , who resides at , and was issued pursuant to order dated the day of , 19 , for such default as is therein mentioned* [*being a default in payment of money under sect. 4 of the Debtors Act, 1869*] or [*not being a default in payment of money*].

[NOTE.—The above "Notice to the Sheriff" (which forms a footnote to the official forms now in use) and the "Indorsement" form no part of the Appendix to the Rules, but were added to the above form under Ord. 61, r. 33.]

No. 12A.—*Bench Warrant.*

[*Title as in No.* 1, *supra.*]

England to Wit.

Whereas it is certified to me by the proper officer in that behalf that an order was made on the day of , 19 , by the Hon. Mr. Justice that the above-named be committed to His Majesty's prison at Holloway until further order for not complying with the order of the Hon. Mr. Justice dated day of , 19 , and that the said is still in contempt in failing to comply therewith. These are therefore to command you forthwith to apprehend the said and detain him until the arrival of the Tipstaff.

Dated

(Signed and sealed)
A Judge of H.M. High Court of Justice.

To , Tipstaff of the Division of the High Court of Justice and to all constables and other peace officers whom it may concern.

No. 13.—*Writ of Sequestration* (Ord. 43).

[*Title as in No.* 1, *supra.*]

EDWARD THE SEVENTH, by the grace of God, *&c.* [*as in Form No.* 1]:

To [*names of not less than four Commissioners*] greeting:

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein A. B. is plaintiff and C. D. and others are defendants [*or*, in a certain matter then depending, intituled "In the matter of E. F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court made in the said action [*or* matter], and bearing date the day of , 19 , it was ordered that the said C. D. should [pay into Court to the credit of the said action the sum of £ , *or, as the case may be*]. Know ye, therefore, that we, in confidence of your

prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into Court to the credit of the said action the sum of £ , *or as the case may be*] clear his contempt, and our said Court make other order to the contrary.

Witness, *&c.*

[APPENDIX J.]

Forms of Subpœna, &c.

No. 1.—*Subpœna ad Testificandum* (*General Form*) (Ord. 37, r. 27).

19 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between plaintiff,
and
defendant.

Edward the Seventh, by the grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, to [*the names of three witnesses may be inserted*] greeting:

We command you to attend before at on day the day of , 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the plaintiff [*or* defendant].

Witness, *&c.*

No. 2.—*Habeas Corpus ad Testificandum* (Ord. 37, r. 27).

[*Heading as in Form* 1.]

EDWARD THE SEVENTH, by the grace of God, *&c.*, to the [keeper of our prison at]

We command you that you bring , who it is said is detained in our prison under your custody , before at on day the day of at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, *&c.*

This writ was issued, *&c.*

No. 3.—*Subpœna Duces Tecum* (*General Form*) (Ord. 37, r. 27).

[*Heading as in Form* 1.]

EDWARD THE SEVENTH, by the grace of God, *&c.*, to [*the names of three witnesses may be inserted*] greeting:

We command you to attend before at , on day the day of , 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, *&c.*

No. 4.—*Subpœna ad Testificandum at Assizes* (Ord. 37, r. 27).

[*Heading as in Form* 1.]

EDWARD THE SEVENTH, by the grace of God, *&c.*, to [*the names of three witnesses may be inserted*] greeting:

We command you to attend before our justices assigned to take the assizes in and for the county of , to be holden at , on day the day of , 19 , at the hour of in the noon, and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the .

Witness, *&c.*

No. 5.—*Subpœna Duces Tecum at Assizes* (Ord. 37, r. 27).

[*Heading as in Form* 1.]

EDWARD THE SEVENTH, by the grace of God, *&c.*, to [*the names of three witnesses may be inserted*] greeting:

We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at , on day, the day of , 19 , at the hour of in the noon, and so from day to day during the said assizes

until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, *&c.*

No. 6.—*Subpœna ad Testificandum at Sittings of High Court* (Ord. 37, r. 27).

[*Heading as in Form* 1.]

EDWARD THE SEVENTH, by the grace of God, *&c.*, to [*the names of three witnesses may be inserted*] greeting:

We command you to attend at the sittings of the Division of our High Court of Justice for , to be holden at , on day, the day of , 19 , at the hour of in the noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the .

Witness, *&c.*

No. 7.— *Subpœna Duces Tecum at Sittings of High Court* (Ord. 37, r. 27).

[*Heading as in Form* 1.]

EDWARD THE SEVENTH, by the grace of God, *&c.*, to [*the names of three witnesses may be inserted*]:

We command you to attend at the sittings of the Division of our High Court of Justice for , to be holden at , on day, the day of , 19 , at the hour of o'clock in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, *&c.*

No. 13.—*Commission to Examine Witnesses* (Ord. 37, r. 6; and see D. C. F. No. 610).

[*Heading as in Form* 1.]

EDWARD THE SEVENTH, by the Grace of God, *&c.*, to , of and of commissioners named by and on behalf of , and to , of , and , of , commissioners named by and on behalf of the , greeting:

Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the said and respectively at , before you or any two of you, so that one commissioner only on each side be present and act at the examination. And we command you as follows:

1. Both the said and the said shall be at liberty to examine on interrogatories and *vivâ voce* on the subject-matter

thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *vivâ voce*, the party producing any witness for examination being at liberty to re-examine him *vivâ voce;* and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, the commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract, shall be annexed to the witness's deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *vivâ voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of , enclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you or any of you, in any manner act in the execution hereof, you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other commissioner a commissioner may himself take the oath.

And we give you or any of you authority to administer such oath to the other or others of you.

Witness, *&c.*

Witnesses' Oath.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

Commissioners' Oath.

You [*or* I] shall, according to the best of your [*or* my] skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you [*or* me] God.

[Where there is only a single commissioner, he may be authorised to administer this oath to himself. (*Wilson* v. *De Coulon*, 22 C. D. 841.)]

Interpreter's Oath.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by

the commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

Direction of Interrogatories, *&c.*, when returned by the Commissioners.

In probate actions to the Probate Registry.

THE SENIOR MASTER OF THE SUPREME COURT OF JUDICATURE, ROYAL COURTS OF JUSTICE, LONDON.

[Letters so addressed travel post free from any part of the United Kingdom.]

[APPENDIX K.]

SUMMONSES AND ORDERS.

No. 1.—*Summons* (*General Form*) (Ord. 54, r. 10).

, 19 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between , plaintiff,
and
, defendant.

Let all parties concerned attend the Judge [*or* Master] in Chambers [*Central Office, Royal Courts of Justice, Strand, London*], on day, the day of , 19 , at o'clock in the noon, on the hearing of an application on the part of . Dated the day of , 19 .

In probate actions at the Probate Registry, Somerset House, when the summons is before the Registrar.

This summons was taken out by , of , solicitor for .

To .

[NOTE.—The words in italics have been added to the Central Office Official form.]

No. 1A.—*General Form of Originating Summons* (Ord. 54, r. 4B).

, 19 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

[*If in the Chancery Division add the name of the Judge to whom the matter is assigned.*

If the question to be determined arises in the administration of an estate or a trust, entitle it also in the matter of the estate or trust.]

Between A. B., plaintiff,
and
C. D., defendant.

Let of in the county of within eight days after service of this summons on him, inclusive of the day of such ser-

vice, cause an appearance to be entered for him to this summons, which is issued upon the application of of in the county of who claims to be [*state the nature of the claim*], for the determination of the following questions: [*State the questions.*]

Dated the .

This summons was taken out by , solicitor for the above-named .

The defendant may appear hereto by entering appearance either personally or by solicitor at the Central Office, Royal Courts of Justice.

[NOTE.—If the defendant does not enter appearance within the time and at the place above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.]

[R. S. C., Nov. 1893.]

No. 1F.—*Notice of Appointment to hear Originating Summons* (Ord. 54, r. 4D).

To [*insert the name of the defendant or respondent*].

Take notice that you are required to attend the Judge [*or* Master] in Chambers [*or* at the Chambers of Mr. Justice] [*or* at the Admiralty Registry], at the Royal Courts of Justice on the day of , 19 , at o'clock in the noon, for the hearing of the originating summons issued herein on the day of , 19 , and that if you do not attend in person or by solicitor at the time and place mentioned, such order will be made and proceedings taken as the Judge [*or* Master] may think just and expedient.

(Signed)
Solicitor for the Plaintiff [*or* Applicant].

[NOTE.—Prescribed by R. S. C., Nov. 1893. As to use of this form where defendant or respondent makes default of appearance, see Ord. 13, r. 15 (nn.), S. C. R.]

No. 1G.—*Originating Summons under Ord. 54, r. 4f.*

19 .

In the High Court of Justice.
Division.

[*If in the Chancery Division, add the name of the Judge to whom the matter is assigned.*]

In the matter of A. B., a solicitor.

Let A. B. of attend [if in the Chancery Division, at the Chambers of Mr. Justice , at the time specified in the margin hereof] [if in King's Bench, the Judge [*or* Master] in Chambers, Central Office, Royal Courts of Justice, Strand, London] [if in

Probate Division, at the Probate Registry, or if in Admiralty Division, at the Admiralty Registry], on the day of , 19 , at o'clock in the noon, on the hearing of an application on the part of [*state relief sought*].

[*If for leave to enforce award under sect.* 12 *of the Arb. Act*, 1889, *add*, "And that the respondent do pay the costs of this application to be taxed."]

[NOTE.—It will not be necessary for you to enter an appearance in the Central Office, but if you do not attend, either in person or by your solicitor, at the time and place above mentioned [or at the time mentioned in the indorsement hereon], such order will be made and proceedings taken as the Judge may think just and expedient.]

[R. S. C., August, 1894.]

No. 2.—*Order* (*General Form*) (Ord. 54, r. 29).

[*Heading as in Form* 1.]

([1]) Judge [*or* Master] in Chambers.

Between

Upon hearing and upon reading the affidavit of filed the day of , 19 , and .

It is ordered , and that the costs of this application be .

Dated the day of , 19 .

[See Seton, p. 272.]

([1]) Insert name of Judge or Master.

No. 2A.—*Affidavit for filing with Order by Consent.*

[*Heading as in Form* 1.]

I, of [*description*], make oath and say as follows:—

1. That a consent to a [*nature of the order*] order was given on the day of in the year of Our Lord one thousand nine hundred and , which order [*or* a true copy of which order] is hereto annexed marked "A."

2. And I further say that the defendant is a and resides at . Sworn, *&c.*

This affidavit is filed on behalf of .

[NOTE.—A consent order for judgment requires registration under ss. 27, 28, of the Debtors Act, 1869.]

No. 4B.—*Order for Directions.*

[*Official Form.*]

Upon hearing the solicitors on both sides, the following directions are hereby given, and it is ordered

That there be pleadings in the action as follows :—

Statement of claim containing full particulars to be delivered in days from this date.

Statement of defence containing full particulars in days from delivery of statement of claim.

Reply, if necessary, in days after statement of defence.

That the plaintiff and defendant do, respectively, after delivery of defence, and within ten days after service of a copy receipt for deposit in Court, answer on affidavit stating what documents are or have been in their possession or power relating to the matters in question in this action.

That the action be tried at .

That the action be tried with a Judge [and jury. Special jury on notice by plaintiff with notice of trial, or by defendant within four days after.]

Liberty to either party to apply.

And that the costs of this application be costs in the cause.

Dated the day of , 19 .

No. 5.—*Order for Time* (but see Ord. 52, r. 14).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the shall have time, and that the costs of this application be .

Dated the day of , 19 .

[See Seton, 46, Form 2.]

No. 10.—*Order to Amend* (Ord. 28, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by , and that the costs of this application be .

Dated the day of , 19 .

[See Seton, p. 44.]

No. 12.—*Order for Particulars (General)* (Ord. 19, r. 7).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action, and that unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof, and that the costs of this application be .

Dated the day of , 19 .

No. 12A.—*Order for Particulars of Counterclaim* (Ord. 19, r. 7).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the defendant do within days deliver to the plaintiff's solicitor or agent particulars of the said defendant's set-off (counterclaim), that in default the said defendant be precluded from giving evidence in support thereof on the trial of this action, and that the costs of this application be .

Dated the day of , 19 .

[Additional form prescribed for official use under Ord. 61, r. 33.]

No. 15.—*Order to Dismiss for want of Prosecution* (Ord. 27, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of , 19 , and

It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be .

Dated the day of , 19 .

[See forms in Seton, pp. 134—137.]

No. 16.—*Order for Delivery of Interrogatories* (Ord. 31, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of , 19 , and

It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by Ord. 31, rr. 8 and 26, of the Rules of the Supreme Court, and that the costs of this application be .

Dated the day of , 19 .

[See Seton, p. 50. See also note to following form.]

No. 17.—*Order for Affidavit as to Documents* (Ord. 31, r. 12).

[*Heading as in Form* 1.]

Upon hearing .

It is ordered that the do, within days from the date of this order, answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be .

Dated the day of , 19 .

[NOTE.—The form in official use combines this and the preceding form.]

No. 18.—*Order to Produce Documents for Inspection* (Ord. 31, r. 14).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of , 19 , and

It is ordered that the do, at all seasonable times, on reasonable notice, produce at [*insert place of inspection*], situate at , the following documents, namely , and that the be at liberty to inspect and peruse the documents so produced, and to make notes of their contents, and be entitled to be supplied with copies thereof on payment therefor at the rate prescribed by Ord. 55, r. 27, reg. 18. In the meantime it is ordered that all further proceedings be stayed, and that the costs of this application be .

Dated the day of , 19 .

[As amended by R. S. C. (June) 1905.]

No. 20.—*Order for Service out of Jurisdiction* (Ord. 11).

[*Heading as in Form* 1.]

In the matter of the Judicature Acts, 1873—1899, and in the matter of an intended action.

Between plaintiff,
and
defendant.

Upon [hearing . . . . . and upon] reading the affidavit of filed herein,

It is ordered that the *intended* plaintiff be at liberty to issue a writ [for service out of the jurisdiction] *of summons against the intended defendant.*

And it is further ordered that *the said intended plaintiff be at liberty to serve* [*If a foreigner in a foreign country insert "Notice of"*] *the said writ at* [*Here insert country or place within the limits of which the service is to be made*], *or elsewhere in the* , *and that* the time for appearance to the said writ *by the said intended defendant* be within after the service [thereof] *of the said* [*Here insert "Writ" or "Notice of" as may be required*].

Dated the day of , 19 .

[See Seton, 7, 8, and Table of Times for Appearance, Vol. I., Part II.]

[NOTE.—In the official form now in use the words in brackets in the first paragraph and the word "thereof" in the second paragraph are omitted, and the words in italics are added.]

No. 20A.—*Order to bespeak Request for Service abroad* (Ord. 11, r. 8).

[*Heading as in Form* 1.]

Upon reading the [certificate, declaration, *or, as the case may be, describing the same*]

It is ordered that the plaintiff be at liberty to bespeak a request for substituted service of notice of the writ of summons herein on the defendant at , or elsewhere in the [*name of country*] and that the said defendant have days after such substituted service within which to enter appearance.

Dated this day of , 19 .

[R. S. C. (July) 1903.]

No. 21.—*Order for Substituted Service* (Ord. 10).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a prepaid post letter, addressed to the defendant at , shall be good and sufficient service of the writ.

Dated the day of , 19 .

[See Seton, p. 4.]

No. 22.—*Order for Renewal of Writ* (Ord. 8, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court, Ord. 8, r. 1.

Dated the day of , 19 .

[See Seton, p. 1.]

No. 27.—*Order Charging Stock—Nisi* (Ord. 46, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , whereby it appears that the plaintiff recovered a judgment against the defendant on the day of , 19 , for the sum of £ and £ costs, that the said defendant is still indebted to the plaintiff in the sum of £ , and that there is standing in .

It is ordered that unless sufficient cause be shown to the contrary before the Judge in Chambers, Central Office, Royal Courts of Justice, Strand, London, on day, the day of , 19 , at o'clock in the forenoon, the defendant's interest in the so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment *together with the costs of this application*.

Dated the day of , 19 .

[See forms in Seton, pp. 477—480.]

[NOTE.—The original form has been amended in pursuance of Ord. 61, r. 33, by the addition of the words in italics.

Where the order is against a fund standing in the name of a person of unsound mind, the order should not omit to state what portion of the fund shall stand charged (*Horne* v. *Pountain*, 23 Q. B. D. 264).]

No. 28.—*Order Charging Stock—Absolute* (Ord. 46, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and an order *nisi* made herein on the day of , 19 , reciting the affidavit of , whereby it appeared that the plaintiff recovered a judgment against the defendant on the day of , 19 , for the sum of £ and £ costs, that the said defendant is still indebted to the plaintiff in the said sums so recovered, and that there is standing in

It is ordered that the defendant's interest in the so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said judgment, *together with* £2 12*s.* 6*d. the costs of this application, such sum of* £2 12*s.* 6*d. to be added to the judgment debt.*

Dated the day of , 19 .

[NOTE.—The original form has been amended in pursuance of Ord. 61, r. 33, by the addition of the words in italics.

Where the order is against a person of unsound mind, see note to preceding form.]

No. 29.—*Charging Order. Solicitor's Costs.*

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the said , the solicitor for the in this action, shall have a charge upon for his costs, charges, and expenses of and in reference to this action.

Dated the day of , 19 .

[See forms and notes in Seton, pp. 1087—1097; and notes, "Solicitors," *post*, Part IV.]

No. 30.—*Order to remove Judgment from County Court.*

19 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Master in Chambers.

In the matter of a plaint in the County Court of , holden at , wherein , plaintiff, and , defendant.

Upon reading the affidavit of , filed the day of , 19 , and , and the certified copy of the judgment in the plaint above mentioned,

It is ordered that a writ of certiorari issue to remove the said judgment from the above-named County Court into the Division of the High Court of Justice.

Dated the day of , 19 .

No. 35.—*Order for Examination of Witnesses before Trial* (Ord. 37, r. 5).

[*Heading as in Form* 1.]

Upon hearing *the solicitors on both sides*, and upon reading the affidavit of , filed *herein* [the day of , 19 , and]

It is ordered that a witness on behalf of the be examined *vivâ voce* (on oath or affirmation) before *one of the Examiners of the Court or before a* Master [*or*, before esquire, special examiner], the solicitor or agent giving to the solicitor or agent notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court of Judicature, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the *party using the same*, as to his belief, and that the costs of this application be *costs in the action*.

Dated the day of , 19 .

[See Seton, pp. 88-89. The form in official use contains the words in italics which were not part of the original form.]

No. 36.—*Short Order for Issue of Commission to Examine Witnesses* (Ord. 37, r. 6).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the be at liberty to issue a commission for the examination of witnesses on behalf at .

And it is further ordered that the trial of this action be stayed until the return of the said commission, [the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by the Master (*or, as the case may be*)], and that the costs of this application be

Dated the day of , 19 .

[NOTE.—In orders in C. D. the words within brackets are sometimes omitted in cases where there is no necessity for agreement between the parties and the writ of commission (Form, Appx. J., No. 13) is issued on the above form of order, without the long order being drawn up.]

No. 37.—*Long Order for Commission to Examine Witnesses.*

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of 19 , and

It is ordered as follows:—

1. A commission may issue directed to of and of commissioners named by and on behalf of the and to of and of commissioners named by and on behalf of the for the examination upon interrogatories and *viva voce* of witnesses on behalf of the said and respectively at aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said and shall be at liberty to examine upon interrogatories and *viva voce* upon the subject-matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross-interrogatories and *viva voce*, the party producing the witness for examination being at liberty to re-examine him *viva voce;* and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and, with the answers thereto, returned with the said commission.

3. Within days from the date of this order the solicitors or agents of the said and shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also, within days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. days previously to the examination of any witness on behalf of the said or respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter,

paper, or writing, and refusing, for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the witness's deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said or respectively, as to his belief of the .

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be .

Dated the day of , 19 .

No. 37A.—*Order for Issue of Request for Commission* (Ord. 37, r. 6A).

It is ordered that a letter of request do issue directed to the proper tribunal for the examination of the following witnesses, that is to say: .

E. F., of
G. H., of
and I. J., of

And it is ordered that the depositions taken pursuant thereto when received be filed at the Central Office, and be given in evidence on the trial of this action, saving all just exceptions. In probate actions at the Probate Registry.

And it is further ordered that the trial of this action be stayed until the said depositions have been filed.

[NOTE.—The words in italics are not part of the original form, but are usually added. For form of undertaking to be given by solicitor on issuing letter of request, see P. M. R. 13A, Vol. I., Part II.]

No. 37B.—*Request for Commission.*

(See also Ord. 37, r. 6A, and (nn.).)

[*Heading:—To the President and Judges of, &c., &c., or as the case may be.*]

Whereas an action is now pending in the Division of the High Court of Justice in England, in which A. B. is plaintiff and C. D. is defendant. And in the said action the plaintiff claims (*endorsement upon writ*).

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of
G. H., of
and I. J., of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court.

Now I as the President of the said Division of the High Court of Justice have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the High Court of Justice, you as the President and Judges of the said or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you, or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together

with such request in writing, if any, for the examination of other witnesses, through his Majesty's Secretary of State for [Foreign Affairs], for transmission to the said High Court of Justice in England.

[NOTE.—If the request is directed to a British Colony, the words "the Colonies" should be substituted for "Foreign Affairs." If the request is directed to the High Court in India it should be transmitted direct and the concluding sentence of the form altered accordingly. As to undertaking by solicitor, see P. M. R. 13A, Vol. I., Part II.

"*And such other witnesses,*" &c.

In a case where the Divisional Court allowed request to issue with these words remaining as part of the form, the German Court (Amtsgericht No. 1, Berlin) refused to examine any witnesses except those named, and insisted on a supplemental Letter of Request naming the other witnesses whose evidence was required (*Reddaway* v. *Banham*, Manchester D. R. 1891, R. 1087, not reported), and in the case of a Letter of Request to the Court at Wiesbaden, that Court declined to proceed with the examination until the names and addresses of the parties to the action had been supplied.]

No. 37C.—*Order for Appointment of Special Examiner to take Evidence Abroad* (Ord. 37, r. 5).

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides, and upon reading the affidavit of

It is ordered that be appointed as special examiner for the purpose of taking the examination, cross-examination, and re-examination, vivâ voce, *on oath or affirmation of witnesses on the part of the at aforesaid. The solicitors to give to the solicitors days' notice in writing of the date on which they propose to send out this order to for execution, and that days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at , to whom notice relating to the examination of the said witnesses may be sent. And that days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with). And that the deposition when so taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the examiner, under seal, to the senior master of the Supreme Court of Judicature, Royal Courts of Justice, London, on or before the day of next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incident to this application and such examination be costs in the action.*

Dated the day of , 19 .

[Additional Form prescribed under Ord. 61, r. 33.]

No. 38.—*Order for Examination of Judgment Debtor* (Ord. 42, r. 32).

19 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between , Judgment Creditor,
and
, Judgment Debtor.

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, *and whether the debtor has any and what other property, or means of satisfying the judgment, before* , at such time and place as he may appoint, and that the said judgment debtor produce [his books (or as may be ordered)] *any books or documents in his possession or power relating to the same* before the said at the time of the examination [and that the costs of this application be].

Dated the day of , 19 .

[In the official form now in use the words in brackets are omitted, and those in italics are added to the original form.]

No. 39.—*Garnishee Order Nisi* (*Attaching Debt*) (Ord. 45, r. 1).

, 19 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
in Chambers.

Between , Judgment Creditor,
and
, Judgment Debtor.
Garnishee.

Upon reading the affidavit of , filed the day of , 19 , and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of , 19 , for the sum of £ debt and £ costs (together with the costs of the garnishee proceedings), on which judgment the said sum of £ remains due and unpaid.

And it is further ordered that the said garnishee attend the in Chambers, *Central Office, Royal Courts of Justice, Strand, London,* on day the day of , 19 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment, together with the costs of the garnishee proceedings.

Dated the day of , 19 .

[See Seton, p. 485, Form 1.]

No. 40.—*Garnishee Order (Absolute) where Garnishee owes more than Judgment Debt* (Ord. 45, r. 3).

[*Heading as in No.* 39.]

Upon hearing *the solicitors for the judgment creditor and the garnishee*, and upon reading the affidavit of , filed herein and *the order* nisi *made herein, dated the day of* 19 , whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 19 , for the sum of £ and £ costs (together with the costs of the garnishee proceedings), on which judgment the sum of £ remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor £ being so much of the debt due from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt and costs, together with £2 2*s*., the costs of the garnishee proceedings, and that in default thereof execution may issue for the same. And that the said garnishee be at liberty to retain for his costs of this application out of the balance of the debt due from him to the judgment debtor.

Dated the day of 19 .

[See Seton, p. 485, Form 2. See Ord. 45, rr. 1, 3, 4, 6; R. S. C., July, 1902.]

No. 40A.—*Garnishee Order (Absolute) where Garnishee owes less than Judgment Debt* (Ord. 45, r. 3).

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of filed herein and the order *nisi* made herein dated the day of 190 , whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 19 , for the sum of £ debt, and £ costs (together with the costs of the garnishee proceedings), on which judgment the sum of £ remained due and unpaid.

It is ordered that the said garnishee (after deducting therefrom for his costs of this application) do forthwith pay to the said judgment creditor £ the debt due from the said garnishee to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt and costs), and that in default thereof execution may issue for the same. And that the sum of £2 2*s*., the costs of the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.

Dated the day of 19 .

[Additional form prescribed under Ord. 61, r. 33.]

No. 40B.—*Order for Issue between Judgment Creditor and Garnishee* (Ord. 45, r. 4).

[*Heading as in No.* 39.]

Upon hearing the solicitors for the judgment creditor and the garnishee, and reading the affidavit of , and the order nisi *herein, dated the day of , 19*

It is ordered that the judgment creditor and the garnishee proceed to the trial of an issue wherein the said judgment creditor shall be plaintiff and the said garnishee shall be defendant, and that the question to be tried shall be whether the said garnishee was indebted to the judgment debtor in any and what amount at the time the said order nisi *was served. And it is further ordered that the issue be prepared and delivered by the plaintiff therein within ten days from this date and be returned by the defendant therein within seven days and be tried at , and that the question of costs and all further questions be reserved until the trial of the said issue.*

Dated the day of , 19 .

[Additional form prescribed for official use under Ord. 61, r. 33. Chitty's Forms, 462.]

No. 40C.—*Order to Deliver Bill of Costs.*

19 . No. .

In the High Court of Justice.

King's Bench Division.

Master . Master in Chambers.

In the matter of , gentlem , of the solicitors of the Supreme Court.

Upon hearing the solicitors for and for , and upon reading the affidavit of , filed this day of , 19

It is ordered that the said do within seven days deliver to the said , or to his solicitor, a bill of costs in all causes and matters wherein he has been concerned for the said , and that he give credit therein for all moneys received by him from or on account of the said .

Dated this day of , 19 .

[Chitty, F., 7. This is an additional form prescribed for official use under Ord. 61, r. 33.]

No. 41.—*Order on Client's Application to Tax Solicitor's Bill of Costs.*

In the High Court of Justice.
Division.
in Chambers.

In the matter of the taxation of costs, and in the matter of , gentleman, one of the solicitors of the Supreme Court.

Upon hearing, *&c.*

It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred

to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what (if anything) he may on such taxation appear to have been overpaid.

And it is further ordered that [*if the said solicitor attends on the taxation*] the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be charged [if payable] according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

Dated the day of , 19 .

The words in italics "if the said solicitor attends on the taxation" are inserted in this form by mistake, as under 6 & 7 Vict. c. 73, s. 37, on the client's application to tax, the costs of the reference are always directed to be taxed, and it is only where the solicitor applies for an order to tax, that it depends on whether the client attends on the taxation whether the costs of reference ought to be taxed. The words are omitted from the forms now in official use.

Enforcing.—As to enforcing this form of order, see Ord. 42, r. 17, (n.) ["Any costs."]

No. 42.—*Order on Solicitor's Application to tax Bill of Costs.*

In the High Court of Justice.
Division.
in Chambers.

In the matter of the taxation of costs, and in the matter of , gentleman, one of the solicitors of the Supreme Court.

Upon hearing and upon reading the affidavit of , filed the day of , 19 .

It is ordered that the above-named solicitor's bill of fees, charges, and disbursements, delivered to (hereinafter called the said client) be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what (if anything) he may on such taxation appear to have been overpaid.

And it is further ordered that if the said client shall attend upon such taxation the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference to be paid according to the event of the taxation pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

Dated the day of , 19 .

[See Seton, p. 270, Form 4; *Re Harcourt*, 32 Sol. Jo. 92.]

[The words "if the said client shall attend upon such taxation" were not included in the original form, but they are rightly added to forms now in use. See note to Form No. 41, *supra*.

This form does not contain any direction for payment by the client of what may be found due from him. In a Chancery matter the solicitor must bring an action to recover such costs. (*Re Debenham & Walker*, (1895) 2 Ch. 430).]

No. 43.—*Order to tax after Action brought.*

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 .

It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the taxing officer to be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand, pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be .

Dated the day of , 19 .

[NOTE.—See Ord. 42, r. 24.]

No. 44.—*Order to try Action in County Court.*

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that this action be tried before the County Court of , holden at , and that the costs of this application be .

Dated the day of , 19 .

[See County Court Act, 1888, s. 65, Part V., *post*, and Seton, p. 826, Form 8.]

No. 45.—*Order to give Security or try Action in County Court.*

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that unless the plaintiff within give full security for the defendant's costs to the satisfaction of the Master [*or as the case may be*], this action be remitted for trial before the County Court of , holden at , and that the costs of this application be .

Dated the day of , 19 .

No. 46.—*Order for Examination touching Means.*

19 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Master in Chambers.

Between , *Judgment Creditor,*

and

, *Judgment Debtor.*

Upon hearing the solicitor for the judgment creditor and the judgment debtor.

It is ordered that the above-named judgment debtor attend before one of the Masters of the Supreme Court of Judicature at such time and place as such Master may appoint, and be orally examined as to whether any and what debts are owing to him and whether he has any and what other property or means of satisfying the judgment signed herein; and that the said judgment debtor produce any books or other documents in his possession or power relating to the same before the said Master at the time of the examination.

Dated, &c.

[See Ord. 42, r. 32; Ord. 45, r. 1. The above is an additional form prescribed for official use.]

[Forms No. 47 (Order for payment of judgment debt by instalments), No. 48 (Order for committal of judgment debtor), and No. 49 (Order for committal of judgment debtor on non-payment of instalment), are no longer in use in the K. B. Chambers, proceedings relating to them having been transferred to the Bankruptcy Court. See note "Debtors Act, 1869, s. 5," Ord. 42, r. 3 (*n*).]

No. 57.—*Order Dismissing Summons (generally).*

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 19 , and

It is ordered that the application of be dismissed with costs to be taxed and paid by the to the [*or*, and that the costs of and occasioned by this application be the 's in any event].

Dated the day of , 19 .

[See Seton, p. 317, No. 5.]

ADDITIONAL FORMS.

[Appendix K. of R. S. C., 1883, ends with No. 57, *supra*. The following additional forms, prescribed for official use under Ord. 61, r. 33, have for convenience been numbered in continuation of the numbers in the Appendix.]

No. 61.—*Order to bring up Witness in Criminal Custody* (16 & 17 Vict. c. 30, s. 9).

[*Heading as in Form* 1.]

Upon reading the affidavit of

It is ordered that the keeper of her Majesty's prison at shall have before , on the day of , 19 , at o'clock in the forenoon, the body of , a prisoner in his custody (as it is said), then and there to testify the truth and give evidence in this , on behalf of , and so on from day to day until his attendance as such witness shall be no longer required; and thereupon he be taken back without delay to the said prison and there detained until he be discharged by due course of law.

Dated the day of , 19 .

[Chitty, F., 324.]

No. 61A.—*Summons for Receiver, with Injunction* (Ord. 50, r. 15A).

King's Bench Division.

[*Heading as in Form* 1.]

Upon reading the affidavit of

Let the defendant attend the Judge in chambers, Royal Courts of Justice, Strand, London, on day, the day of , 19 , at o'clock in the noon, on the hearing of an application on the part of the plaintiff for the appointment of as receiver in this action, on all usual terms, to receive the rents,

profits and moneys receivable in respect of the defendant's interest in the following property, namely: , in satisfaction of the sum of £ due under the judgment in this action dated the .

And, the plaintiff by his solicitor hereby undertaking to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay, it is ordered and directed that the said defendant , his agents and servants, and every of them, be restrained, and an injunction is hereby granted restraining them, and every of them, until after the hearing of the above application, from selling, charging, or otherwise dealing with the said property.

Dated the .

Solicitor for the plaintiff.

To .

No. 62.—*Receiver Order* (*Interim*) (Jud. Act, 1873, s. 25, sub-s. 8; Ord. 50, r. 6).

[*Heading as in Form* 1.]

Upon the application of for the plaintiff and the plaintiff by his undertaking to be answerable for all sums to be received by the receiver hereinafter named.

It is ordered that be appointed without security until the day of next inclusive or further order to receive the rents and profits of , but without prejudice to the rights of any prior incumbrancer or his possession (if any) and the tenants of the said estate are (without prejudice as aforesaid) to attorn and pay their rents in arrear and growing rents to the said so long as he shall continue to be such receiver, and that all questions as to passing his accounts and payments thereunder and all further questions be reserved until further order.

Defendant to be at liberty to apply in meantime.

Dated the day of , 19 .

No. 63.—*Receiver Order* (Jud. Act, 1873, s. 25, sub-s. 8; Ord. 50, r. 6).

[*Heading as in Form* 1.]

Upon hearing for the plaintiff, and upon reading the affidavit of

It is ordered that be appointed receiver upon first giving security by bond to the satisfaction of one of the Masters of the Supreme Court of Judicature [*or*, "the District Registrar," *as the case may be*] to receive the rents, profits, and monies, receivable in respect of the following property (that is to say):

But this appointment is to be without prejudice to the rights of any prior incumbrancers upon the said premises, who may think

proper to take possession of or receive the same by virtue of their respective securities, or, if any prior incumbrancer is in possession, then without prejudice to such possession.

And that the tenants of the said premises do attorn and pay their rents in arrear and growing rents to such receiver. And that such receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits, and monies to be received by him, to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments (if any) in passing his accounts, and that such receiver shall on the (1) day of next, and at such further and other times as may be ordered by the master [*or*, "District Registrar"] leave and pass such accounts, and shall on the (2) day of next, and at such further and other times as may be hereafter ordered by the Master [*or*, "District Registrar"] pay the balance or balances appearing due on the accounts so left or such part thereof as shall be certified as proper to be so paid; such sums to be paid in or towards satisfaction of what shall for the time being be due in respect of the judgment signed on the day of for the sum of £ debt, and £ for costs, making together the sum of £ ; and that the costs of this order and of carrying the same into effect and of obtaining the discharge of the receiver (such costs to be ascertained by the Master [*or*, "District Registrar"]) shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the amount shall be insufficient, then upon the certificate of the Master [*or*, "District Registrar"] being given stating the amount of the deficiency (such certificate to be given after passing the final account), the amount of the deficiency so certified shall be paid by the judgment debtor to the judgment creditor.

It is further ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall forthwith be paid by the receiver into Court to the credit of this action, subject to further order.

And any of the parties are to be at liberty to apply to the Judge in Chambers as there may be occasion.

Dated this day of , 19 .

(1) Three months.
(2) One month after the three months.

No. 64.—*Order for Deposit of Securities or Effects* (Ord. 50).

[*Heading as in Form* 1.]

Upon hearing

It is ordered that the [plaintiff *or* defendant] on or before the day of , 19 , place in a box in the presence of the solicitors of the [defendant *or* plaintiff], the [*here describe the articles sufficiently for identification*], such box to be indorsed "In the High Court of Justice, King's Bench Division [*title of cause with distinguishing mark*, 19 ,]" to be sealed in the presence of the solicitors of the plaintiff and defendant. And

the on or before the day of , 19 , is to deposit such sealed box in Court, and the same is not to be opened or removed without the further order of the Court [*or* a Judge], and that the costs of this application be .

Dated the day of , 19 .

[See P. M. R. (22), Vol. I., Part II. This form would now appear to be obsolete. See Ord. 61, r. 30.]

No. 65.—*Order allowing Inspection of Securities or Effects* (Ord. 50).

[*Heading as in Form* 1.]

Ledger credit to which lodged .

Upon hearing

It is ordered that the sealed box indorsed—

"In the High Court of Justice,
"King's Bench Division,
" *v.*
" 19 ,"

deposited in Court and lodged to the above ledger credit at the Bank of England (Law Courts Branch) on account of the Paymaster-General for and on behalf of the Supreme Court of Judicature pursuant to an order of the Court [*or* a Judge] dated the day of , 19 , be delivered out to the senior clerk for the time being of the General Filing Department of the Central Office of the High Court of Justice, and that be allowed to open the said box in the said General Filing Department under the superintendence of an officer of that department, and to inspect the contents of such box under the same superintendence. And that after such inspection the same be re-sealed by the parties in the presence of the said officer and be redeposited by such senior clerk at the Bank of England to the credit and account aforesaid, subject to the further order of the Court [*or* a Judge], and that the costs of this application be .

Dated the day of , 19 .

[See P. M. R. (22), Vol. I., Part II. See (n.) to preceding form.]

No. 66.—*Order for Interim Injunction* (Jud. Act, 1873, s. 25, sub-s. 8; Ord. 50, r. 6).

[*Heading as in Form* 1.]

Upon hearing for the plaintiff and upon reading the affidavit of , filed the day of ; 19 , and the plaintiff by his said undertaking to abide by any order of the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the defendant shall

have sustained any by reason of this order which the plaintiff ought to pay. It is ordered and directed that the defendant his agents and servants and every of them be restrained and an injunction is hereby granted restraining them and every of them from until after the trial of this action or until further order.

Dated the day of , 19 .

[Chitty, F., 219; Seton, 518.]

No. 67.—*Order to Try by Jury* (Ord. 36, rr. 2, 7).

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides .
It is ordered that this action be tried with a jury.
And that the costs of this application be .
Dated the day of , 19 .

No. 70.—*Order for Security for Costs.*

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides, and reading the affidavit of .

It is ordered that the plaintiff give security for the defendant's costs in this action to the satisfaction of the Master, and that in the meantime all further proceedings be stayed.

And that the costs of such application be .
Dated the day of , 19 .

FORMS

USED IN THE

CONTENTIOUS DEPARTMENT

OF THE

PROBATE DIVISION.

AFFIDAVITS.

Affidavit of Search for Appearance.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

against

In the estate of , deceased.

I, , make oath and say that I did on the day of , One thousand nine hundred and , search the book kept in the Principal Registry of this honourable Court for entering appearances, to ascertain whether or not any appearance had been entered by, or on behalf of, to the (1) served on on the day of , and that I find no appearance has been entered by or on behalf of the said .

Sworn by the above-named at in the of , on the day of , 190 .

Before me,

A Commissioner for Oaths.

(1) Citation, subpœna, or warning to caveat.

Affidavit of Service, &c.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

against

I, of , make oath and say that the annexed was duly served by me on at in the county of by exhibiting the original and delivering a true copy thereof to on the day of , One thousand nine hundred . And I further make oath and say that .

Sworn by the said at in the of , on the day of , 190 .

Before me,

A Commissioner for Oaths.

Affidavit of Service of Summons and Non-attendance.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

against .

I, , for the in this make oath and say:—

1. That I did on the day of , in the year of our Lord One thousand hundred , before the hour of of the clock in the evening, serve in this with a true copy of the summons hereunto annexed (marked) by leaving the same at the of the said situate with there.

And I further say that I did attend the said summons at the return thereof, that is to say, on the day of , at , from the hour of of the clock in the noon until half an hour after the said hour of of the clock on that day, but that the said did not, nor did any person on h behalf, attend to oppose an order being made on the said summons to my knowledge or belief.

Sworn at this day of , 19 .

Before me,

A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

Affidavit of Service, &c.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

against .

I, of , make oath and say that the annexed was duly served by me on at , in the county of , by exhibiting the original and delivering a true copy thereof to on the day of , one thousand nine hundred .

And I further make oath and say that .

Sworn by the said at in the of on the day of , 19 .

Before me,

A Commissioner for Oaths.

Affidavit of Service of Warning and of Search and Non-appearance.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) The (1) Registry.

In the estate of , deceased.

against .

I, , of , in the of , make oath (2) and say as follows :—

1. On the day of , 190 , I duly served (3) of , solicitor , with a true copy of the warning (4) in the estate of of (5) (6) , deceased, such warning being now hereunto annexed, marked A, by delivering to and leaving the same copy with a clerk of the said at (7) office situate at aforesaid.

2. On the day of , 190 , I duly and carefully searched the book kept in the Principal Registry of this honourable Court for entering appearances, from the said (8) day of , 190 , to the present day inclusive, to ascertain whether or not any appearance to the said warning has been entered, and I say that no appearance whatever has been entered to the said warning, by or on behalf of any person or persons whomsoever.

Sworn at on the day of , 190 .

Before me,

A Commissioner for Oaths.

(1) If "*District*," add "*at* ——."

Insert the names, postal addresses, and status or professions of the parties making the oath, commencing "*I*" or "*We*," "*make oath and say*," or (2) "*do solemnly and sincerely affirm*," but in the case of Quakers, say, "*being one of the people called Quakers, do solemnly, sincerely, and truly declare and affirm.*"

(3) Insert names and address of the solicitor who entered caveat.

(4) Mark the warning, and let the Commissioner sign it.

(5) Or "*of —— but formerly of*," if so.

(6) State trade, profession, or status of deceased.

(7) "*His*" or "*their*."

(8) Day of service of warning.

Affidavit verifying Receiver's Account (Ord. 50, r. 20).

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

(*Title.*)

I, , of , the receiver appointed in this cause, make oath and say as follows :—

1. The account marked with the letter A, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of *the rents and profits of the real estate and of the outstanding personal estate of* , the testator [*or* intestate] in

this cause, from the day of , 19 , to the day of , 19 , both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, for my use on account, or in respect of the *said rents and profits accrued due on or before the said day of on an account or in respect of the said personal estate*, except what is included as received in my former account [*or* accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W. X. and Y. Z. , the sureties named in the recognizance dated the of , 19 , are both alive, and neither of them has become bankrupt or insolvent.

Affidavit in verification of Endorsement on Writ of Summons on proving Will in solemn form.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

I, , of (1), make oath (2) and say that , of , deceased, died on the day of , 19 , at (3) , having made and duly executed last will and testament bearing date (4) , and thereof appointed the deponent (5) and that intend to prove in solemn form of the law the said will (6). And further make oath and say that the said deceased, died a (7) without child or parent, brother or sister, uncle or aunt, nephew or niece, or cousin-german, leaving the only person entitled in distribution to h estate in case he should be pronounced to have died intestate.

Sworn by the above-named at in the of on the day of , 19 .

Before me,
A Commissioner for Oaths.

(1) To be made by one of the proposed plaintiffs.
(2) *Or* "solemnly and sincerely affirm."
(3) Insert place of death, *or* "at sea," *&c.*, as the case may be.
(4) With a codicil bearing date, *&c.*, if so.
(5) Insert "sole executor," *or* "one of the executors," *or* "residuary legatee," *or* "residuary legatee in trust," *or* "legatee," or as the case may be.
(6) "And codicil," if so.
(7) Insert "bachelor" *or* "spinster," "widower" *or* "widow," *or* "wife of," *&c.*, and strike out so much as is inapplicable to the case.

Affidavit in verification of Endorsement on Writ of Summons (after appearance to Warning of Caveat).

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

I, , of (1) make oath (2) and say that , of , deceased, died on the day of , 19 , at , having made and duly executed last will and testament bearing date with (3) codicil thereto bearing date and thereof appointed me the deponent (4) , that a caveat, having been entered in the estate of the said deceased in the Probate Registry of this Court, was warned as usual, and that an appearance has been entered to the said warning on behalf of (5) , of , who is therein described as of the said deceased.

Sworn by the above-named at in the of on the day of , 19 .

Before me,
A Commissioner for Oaths.

(1) To be made by one of the proposed plaintiffs.
(2) *Or* "solemnly and sincerely affirm."
(3) If so.
(4) Insert "sole executor," *or* "one of the executors," *or* "residuary legatee," *or* "residuary legatee in trust," *or* "legatee," or as the case may be.
(5) Insert particulars as described in appearance.

Affidavit in verification of Endorsement on Writ of Summons in an Interest Suit.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

I, , (1) , of , make oath and say that , of , died at on the day of , 190 , a (2) , without child or parent, brother or sister, uncle or aunt, nephew or niece, or cousin-german, and intestate, leaving me, the deponent, lawful and one of next of kin that a caveat having been entered in the estate of the said deceased in the Probate Registry of this Court, was warned as usual, and that an appearance has been entered to the said warning

on behalf of (3) of , who is therein described as of the said deceased.

Sworn by the above-named at in the of , on the day of , 190 .

Before me,
A Commissioner for Oaths.

(1) To be made by one of the proposed plaintiffs.
(2) Insert "bachelor" or "spinster," "widower" or "widow," or "wife of," &c., and strike out so much as is inapplicable to the case.
(3) Insert name and interest as described in appearance.

Affidavit of Scripts.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

against .

of , in the county of (1) , of the parties in this cause, make oath and say, that no paper or parchment writing, being or purporting to be, or having the form or effect of a will or codicil, or other testamentary disposition of , late of , in the county of , deceased, the deceased in this cause, or being or purporting to be instructions for or the draft of any will, codicil, or testamentary disposition of the said deceased has at any time either before or since his death come to the hands, possession, or knowledge of , the deponent, or to the hands, possession, or knowledge of , solicitors in this suit, so far as is known to me the deponent, save and except the true and original last will and testament of the said deceased, now remaining in the Probate Registry of the High Court of Justice [*or*] hereunto annexed, the said will bearing date the day of , 1 . Also save and except .

Sworn at on the day of , One thousand nine hundred .

Before me,
A Commissioner for Oaths.

N.B.—All papers answering the description given in Rule 31, which are in the possession or under the control of the party making the affidavit, should be particularly described therein, and brought into the Principal Registry. If any such papers are known to be in the possession, or under the control, of any other person, the description of such papers and the name and address of such other person should also be set forth.

(1) One or more.

CITATIONS.

Citation to Accept or Refuse Probate.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

EDWARD THE SEVENTH, by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith.

To [1] of .

WHEREAS it appears by an affidavit of of sworn on the day of , 19 , that of deceased died on the day of , 19 , at , having made and duly executed h last will and testament [2], bearing date (and now remaining in the Principal Probate Registry aforesaid) [3].

AND WHEREAS it further appears by the said affidavit that the said [4] .

NOW this is to command you the said that within [5] eight days after the service hereof on you inclusive of the day of such service you do cause an appearance to be entered for you in the said Principal Probate Registry, situate at Somerset House, Strand, in the county of Middlesex, and accept or refuse [6] of the said deceased or show cause why [7] the same should not be granted to the said [8] .

AND take notice that in default of your so appearing and accepting and extracting the said [9] our said Court will proceed to grant letters of administration (with the said will annexed) of the said estate to the said , your absence nothwithstanding.

Dated at London this day of , 190 , and in the year of our reign.

Registrar.

Citation issued by .

Solicitor .

[NOTE.—All draft citations must be settled in the Registry before being engrossed for service.]

[1] To C. D., of , and E. F., of (if so).

[2] With one, two or three codicils (if so).

[3] "And therein appointed you the said C. D. sole executor," *or* "sole executor and residuary legatee and devisee in trust," *or* "sole executor and residuary legatee and devisee," *or* "and therein appointed you the said C. D. sole executor and you the said E. F. residuary legatee and devisee." If no executor appointed, say "and therein appointed you the said C. D. residuary legatee and devisee but did not therein appoint any executor," *or* "but did not therein appoint any executor or residuary

legatee and devisee, and that you the said C. D. are the lawful widow and relict of the said deceased," *or as the case may be.* In clearing off prior rights the heir-at-law may have to be considered, unless it can be shown that deceased did not die possessed of any real estate.

(4) "A. B. is the residuary legatee and devisee" *or* "one of the residuary legatees and devisees for life," *or* "a legatee named in the said will," *or* "a creditor of the said deceased," *or as the case may be.*

(5) Alter to thirty days if citation will be served by advertisement.

(6) "Probate and execution of the said will" *or* "letters of administration" (with the said will annexed of all the estate which by law devolves to and vests in the personal representative).

(7) If citing an executor strike out the words "the same," and say "letters of administration" (with the said will annexed of the said estate of the said deceased).

(8) "A. B. as the residuary legatee and devisee named in the will of the said deceased," *or as the case may be.*

(9) "Probate of the said will," *or* "letters of administration" (with the said will annexed).

Citation to Accept or Refuse Administration.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

EDWARD THE SEVENTH, by the grace of God, *&c.*

To (1) .

WHEREAS it appears by an affidavit of sworn on the day of , 190 , that of died there on the day of , 190 , intestate (2) (3) leaving you the said (4) and only next of kin and (4) together the only persons entitled in distribution to h personal estate (5) and you the said h heir-at-law.

AND WHEREAS it further appears by the said affidavit that the said is a creditor (6) of the said deceased (7).

NOW this is to command you the said that within eight (8) days after the service hereof on you inclusive of the day of such service you do cause an appearance to be entered for you in the Principal Probate Registry of our said Court at Somerset House, Strand, in the county of Middlesex, and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the said deceased, or show cause why the same should not be granted to the said .

AND take notice that in default of your so appearing and accepting and extracting the said letters of administration our said Court will proceed to grant letters of administration of the said estate of the said deceased to the said , your absence notwithstanding.

Dated at London this day of , 190 , and in the year of our reign.

, Solicitor.

Registrar.

[NOTE.—All draft citations must be settled in the Registry before being engrossed for service.

(1) C. D., of , and E. F., of (if so), *or* the next of kin (if any), and all persons in general or claiming to have any interest in the estate of , deceased.

(2) "A bachelor," "a bachelor without a father," "a spinster without a parent," "a widow," "a widower without child or parent," *or as the case may be.*

(3) If to next of kin in general, all persons entitled to grant must be cleared off, *e.g.*, "a bachelor without parent," "brother" *or* "sister," "uncle" *or* "aunt," "nephew" *or* "niece," "cousin german," or any known relation, and strike out the remainder of the page.

(4) Strike out these words if not applicable.

(5) If no real estate strike out these words: "And that the said deceased did not die possessed of or entitled to any real estate."

(6) If so.

(7) "And that you the said C. D. are still in your minority, to wit, of the age of years only, and that the said E. F. is your natural and lawful and next of kin," *or as the case may be.*

(8) Alter to thirty days if citation will be served by advertisement.

Citation to bring in Probate (*another will set up*).

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

EDWARD THE SEVENTH, by the grace of God, *&c.*

To A. B., of in the county of .

Citation to bring in Probate (another will set up).

WHEREAS it appears by the affidavit of C. D., sworn the day of 19 , that probate of the alleged last will and testament of E. F., of deceased, was on the day of 19 , granted to you by our High Court of Justice, at the principal probate registry thereof: And whereas it is alleged in the said affidavit that the said deceased made and duly executed his last will and testament, dated the day of and thereof appointed the said C. D. executor [or as the case may be], and that the said probate ought to be called in, revoked, and declared null and void in law:

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal probate registry of our said court at Somerset House, Strand, London, the aforesaid probate in order that the said C. D. may proceed in due course of law for the revocation of the same.

Dated at London this day of , 19 , and in the year of our reign.

Extracted by of Solicitor. (Signed) G. H., Registrar.

Citation to bring in Probate (Intestacy alleged).

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

EDWARD THE SEVENTH, by the grace of God, *&c.*

To A. B., of in the county of .

Citation to bring in Probate (Intestacy alleged).

WHEREAS it appears by the affidavit of C. D., sworn the day of 19 , that probate of the alleged last will and testament of E. F., of deceased, was on the day of , 19 , granted to you by our High Court of Justice at the principal probate registry thereof, and that the said deceased died a bachelor, leaving the said C. D., his natural and lawful father and next of kin. And whereas it is alleged in the said affidavit that the said deceased died intestate, and that the said probate ought to be called in, revoked, and declared null and void in law:

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal probate registry of our said court at Somerset House, Strand, London, the aforesaid probate in order that the said C. D. may proceed in due course of law for the revocation of the same.

Dated at London this day of , 19 , and in the year of our reign.

Extracted by of Solicitor. (Signed) G.H., Registrar.

Citation to bring in Administration (will set up).

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

EDWARD THE SEVENTH, by the grace of God, *&c.*

To A. B., of in the county of .

Citation to bring in Administration (will set up).

WHEREAS it appears by the affidavit of C. D., sworn the day of , 19 , that letters of administration of all the estate which by law devolves to and vests in the personal representative of E. F., of deceased, were on the day of granted to you by our High Court of Justice at the principal probate registry thereof. And whereas it is alleged in the said affidavit that the said deceased made and duly executed his last will and testament dated the day of 19 , and thereof appointed the said C. D. executor [or as the case may be], and that the said letters of administration ought to be called in, revoked, and declared null and void in law:

Now this is to command you the said A. B. that within eight days after service hereof on you inclusive of the day of such service, you do bring into and leave in the principal probate registry of our said court, at Somerset House, Strand, London, the

aforesaid letters of administration in order that the said C. D. may proceed in due course of law for the revocation of the same.

Dated at London this day of , 19 , and in the year of our reign .

Extracted by of Solicitor. (Signed) G. H., Registrar.

Citation to bring in Administration (administrator alleged not to be entitled).

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate).

EDWARD THE SEVENTH, by the grace of God, &c.

To A. B., of , in the county of .

Citation to bring in Administration (administrator alleged not to be entitled).

WHEREAS it appears by the affidavit of C. D., sworn the day of , 19 , that letters of administration of all the estate which by law devolves to and vests in the personal representative of E. F. of deceased, were on the day of , 19 , granted to you by our High Court of Justice at the principal probate registry thereof as the natural and lawful brother and one of the next of kin of the said deceased. And whereas it is alleged in the said affidavit that you are not one of the next of kin of the said deceased, and that the said deceased died a widower leaving the said C. D., his natural and lawful son and only next of kin [or as the case may be], and that the said letters of administration ought to be called in, revoked, and declared null and void in law:

Now this is to command you the said A. B., that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal probate registry of our said court at Somerset House, Strand, London, the aforesaid letters of administration in order that the said C. D. may proceed in due course of law for the revocation of the same.

Dated at London this day of , 19 , and in the year of our reign.

Extracted by of Solicitor. (Signed) G. H., Registrar.

Citation to see Proceedings.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

EDWARD THE SEVENTH, by the grace of God, &c.

To A. B., of , in the county of .

Citation to see Proceedings.

WHEREAS it appears by the affidavit of C. D., sworn the day of , 19 , that there is now depending in our High Court of Justice a probate action entitled "A. and another against B., 1900, F. No. 336," wherein the plaintiffs are proceeding to prove in

solemn form of law the alleged last will and testament dated the day of 19 , of E. F. of who died on the day of 19 , at . And whereas it further appears by the said affidavit that you are the natural and lawful and one of the next of kin of the said deceased [*or* a legatee under an alleged will dated , or as the case may be]:

Now this is to give notice to you the said A. B., to appear in the said action, either personally or by your solicitor, should you think it for your interest so to do, at any time during the dependence of the said action and before final judgment shall be given therein. And take notice that, in default of your so doing, our said court will proceed to hear the said will proved in solemn form of law and pronounce judgment in the said action, your absence notwithstanding.

Dated at London this day of 19 , and in the year of our reign.

Extracted by of Solicitor. (Signed) G. H., Registrar.

Abstract Citation for Advertisement.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

To .

Take notice that a citation has issued citing you to cause an appearance to be entered for you within days after publication hereof in the Principal Probate Registry of the Court, situate at Somerset House, Strand, in the county of Middlesex, and accept or refuse of , late of , in the county of , deceased, or show cause why letters of administration of the personal estate of the said deceased should not be granted to as , with an intimation that in default of your appearance letters of administration will be granted to the said .

Registrar.

Solicitors.

To be advertised in the following newspapers:—

ORDERS.

Order for Service out of Jurisdiction.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the matter of an intended action

Between Plaintiff,

and

Defendant.

Upon reading the affidavit of , I do order that the intended plaintiff be at liberty to issue a writ of summons against the intended defendant .

And I further order that the said intended plaintiff be at liberty to serve the said writ on the said intended defendant at or elsewhere in the , and that the time for appearance to the said writ by the said intended defendant be within after the service of the said writ.

Dated the day of , 190 .

Probate. Presumed Death.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

Before the Right Honourable Sir John Gorell Barnes, Knight, the President,

Before the Honourable Sir Henry Bargrave Deane, Knight, one of the Justices of the High Court,

sitting at the Royal Courts of Justice, Strand, in the County of Middlesex.

On the day of , 190 .

In the estate of , deceased.

On reading the statement filed on behalf of and the affidavits of and on hearing Counsel thereon, it is ordered that upon an application for probate of the will of to be granted to the executor therein named the death may be sworn to have occurred on or since the .

Administration—Presumed Death.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

Before the Right Honourable Sir John Gorell Barnes, Knight, the President.

Before the Honourable Sir Henry Bargrave Deane, Knight, one of the Justices of the High Court,

sitting at the Royal Courts of Justice, Strand, in the county of Middlesex.

On the day of , 19 .

In the estate of , deceased.

On reading the statement filed on behalf of and the affidavits of and on hearing counsel thereon, it is ordered that upon an application for letters of administration of the estate of , intestate, to be granted to the person entitled by law to the same, death may be sworn to have occurred on or since the day of , such person exhibiting a declaration on oath of the particulars and value of the said estate, and his or her sureties justifying.

Discovery and Inspection of Documents.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

against .

Upon hearing the solicitor for the , I do order, that the do within days after service of this order make and file a full and sufficient affidavit stating whether h h or ha had in h possession or power any and (if any) what document relating to the matters in question in this action, and accounting for the same. And that h do within days after the filing of such affidavit produce to the said , h solicitor or agent, such of the said documents as by such affidavit shall appear to be in h possession, custody, or power, except such of the same (if any) as h may by h said affidavit object to produce. And that the said , h solicitor or agent, may be at liberty to inspect and peruse the documents so produced, and take copies thereof and abstracts and extracts therefrom, as h shall be advised, at h expense.

Dated this day of , 190 .

Registrar.

Order on Summons for Directions.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

against .

Upon hearing the solicitors for the plaintiff and defendant, I do order

1. { Endorsement on writ to stand for statement of claim.
   { Statement of claim to be delivered in days from to-day.
   Statement of defence to be delivered in days from—
   { to-day.
   { delivery of statement of claim.
   Pleadings to be delivered with particulars, if necessary.
2. Affidavit of scripts of to be filed within days from to-day.
3. After delivery of statement of defence, affidavit of documents to be filed by either party within days from service of { notice: / receipt: } inspection within days from filing affidavit.
4. Place of trial.
   Mode of trial.
5. Liberty to apply.

Dated the day of , 190 .

Registrar.

Order for Discontinuance of Proceedings and Grant.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

against

Upon hearing the and by consent, I do order that the contentious proceedings in this arising from caveat No. entered on the day of , 19 , and also from writ of summons issued on the day of , 19 , be discontinued, and that of late of the deceased herein, be granted to , the the in this if entitled thereto .

Dated the day of , 19 .

Registrar.

Order for Subpœna to bring in a Script.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the goods of , deceased.

On reading the affidavit of sworn on the day of , 19 , and filed in the Principal Probate Registry of this Court, whereby it appeared that a certain paper writing, being or purporting to be testamentary, to wit, is now in the possession, within the power, or under the control of , it is ordered by the undersigned Registrar that a subpœna do issue under seal requiring the said within eight days after service thereof, to produce and bring into, and leave in the the said paper writing, under pain of the law, and the contempt thereof.

Dated the day of , 19 .

Registrar.

Order on Appointment of an Administrator and Receiver pending Suit.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

Before the Right Honourable Sir John Gorell Barnes, Knight, the President,

Before the Honourable Sir Henry Bargrave Deane, Knight, one of the Justices of the High Court,

sitting at the Royal Courts of Justice, Strand, in the County of Middlesex.

On the day of , 19 .

against

On reading the statement filed on behalf of the and the affidavits of , and on hearing counsel on behalf of , it is ordered that , such person or persons as shall be agreed upon between the parties, or, in default of agreement, as shall be nominated by one of the registrars, be appointed the administrator, pending this action, of the personal estate of , the deceased in this action, on exhibiting a declaration on oath of the particulars and value of the said personal estate and his sureties justifying. And that , such person be also appointed to be the receiver, pending this action, of the rents and profits of the real estate of the said deceased, on his entering into a bond with two sufficient sureties, in a penal sum to be fixed by one of the registrars, for the faithful performance of the duties committed to him.

Registrar.

Appointment of Receiver of Real Estate.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

against

Whereas there is now depending in the Probate, Divorce and Admiralty Division of the High Court of Justice a certain action touching the validity of the , of , late of , deceased, wherein , plaintiff , and , defendant ; and whereas the said affects the real estate of the said deceased. Now I, the Right Honourable Sir John Gorell Barnes, Knight, the President of the said Division of the Court, do hereby appoint , of , to be the receiver of the rents and profits of the real estate of the said deceased pending the said action, he having given sufficient security for the faithful performance of the duties committed to him.

Dated this day of 19 .

BOND.

Bond to be executed by a Receiver of Real Estate pending Suit.

Know all men by these presents that we are jointly and severally bound unto the Right Honourable , the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, in the sum of pounds, of good and lawful money of Great Britain, to be paid to the said Right Honourable , or to the President of the Probate, Divorce and Admiralty Division of the said Court for the time being, for which payment well and truly to be made we bind ourselves and every of us, for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of , in the year of our Lord one thousand eight hundred and eighty- .

Whereas , late of , died on the day of , one thousand nine hundred and , at , having, as asserted, made and duly executed last will and testament, with codicil thereto, bearing date respectively the . And whereas there is now pending in judgment in the Probate, Divorce and Admiralty Division of the High Court of Justice, a certain probate action instituted by , as one of the executors named in the said will, against , the natural and lawful and next of kin of the said deceased, touching and concerning the validity of the said will and codicil , in which

said probate action as the heir-at-law of the said has been cited to see proceedings, and has entered an appearance, and become a party to the said probate action. And whereas the above bounden has been duly appointed to be receiver of the real estate of the said deceased pending the said probate action.

Now the condition of this obligation is such, that if the above bounden , the receiver of the real estate of the said , deceased, pending the aforesaid probate action, do make a true and perfect inventory of all the rents, issues, and profits of the said real estate which have or shall come to his hands, possession, or knowledge, or into the hands, possession, or knowledge of any other person for him, and the same so made do exhibit, or cause to be exhibited, into the Principal Probate Registry of the High Court of Justice, when lawfully required so to do, and the same rents, issues, and profits do well and truly pay and appropriate according to law, that is to say, in payment and satisfaction of all charges and expenses which are or may be or become legally charged upon and payable out of the said rents, issues, and profits, and in the letting and managing the said real estate, and in performing other the duties committed to him by the President aforesaid, and further do make, or cause to be made, a true and just account of his administration of the said rents, issues, and profits, which shall be allowed by the said Court, and all the rest and residue of the said rents, issues, and profits do deliver and pay under the direction of the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the within-named in the presence of .

SUBPŒNAS.

Subpœna in a Proceeding in Common Form to bring in a Script.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

EDWARD THE SEVENTH, by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith.

To , of .

Whereas, it appears by an affidavit of , sworn on the day of , 19 , and filed in the Principal Probate Registry of our High Court of Justice, that a certain original paper or script, being or purporting to be testamentary, to wit, , bearing date

the day of , 19 , is now in your possession, within your power, or under your control.

Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Principal Probate Registry of our said Court the said original paper or script now in the possession, within the power, or under the control of you the said . And this you shall in no wise omit under pain of the law and the contempt thereof.

Witness, the Right Honourable , Lord High Chancellor of Great Britain, at our High Court of Justice, the day of , 19 , and in the year of our reign.

Registrar.

N.B.—The Principal Probate Registry of the High Court of Justice is at Somerset House, Strand, in the county of Middlesex.

The original papers or scripts above mentioned are to be left in the department of the Record Keepers in that Registry.

Subpœna to a Witness to be examined touching a Testamentary Paper.

EDWARD THE SEVENTH, by the grace of God, *&c.*

To , greeting:

We command you to attend at the sittings of the Probate, Divorce and Admiralty Division of our High Court of Justice at the Royal Courts of Justice, Strand, in our county of Middlesex, on the day of , 19 , by half-past ten of the clock in the forenoon of the same day, and so from day to day whenever the said Division of our said Court is sitting, until the action or proceeding is heard, to testify the truth according to your knowledge [*or*, to answer certain interrogatories to be administered to you], in a certain action now in the said Division of our said Court, depending between plaintiff, and defendant, touching a certain paper writing or script, being or purporting to be testamentary, to wit [*here describe the script, giving the date as accurately as possible*], of which said paper writing or script reasonable grounds have been furnished to our said Court for believing you have knowledge. And this you or any of you shall by no means omit, under the penalty of each of you of one hundred pounds.

Witness, the Right Honourable , Lord High Chancellor of Great Britain, at our High Court of Justice, the day of , 19 , in the year of our reign.

Subpœna issued by of , solicitor for the .

N.B.—Notice will be given to you of the day on which your attendance will be required.

Subpœna ad Testificandum.

EDWARD THE SEVENTH, by the grace of God, &c.

To , greeting:

We command you to attend at the sittings of the Probate, Divorce and Admiralty Division of our High Court of Justice at the Royal Courts of Justice, Strand, in our county of Middlesex, on the day of , 19 , by half-past ten of the clock in the forenoon of the same day, and so from day to day whenever the said Division of our said Court is sitting, until the action or proceeding is heard, to testify the truth according to your knowledge in a certain action now in the said Division of our said Court, depending between plaintiff, and defendant, on the part of the , and on the aforesaid day, between the parties aforesaid to be heard. And this you or any of you shall by no means omit, under the penalty of each of you of one hundred pounds.

Witness, the Right Honourable , Lord High Chancellor of Great Britain, at our High Court of Justice, the day of , 19 , in the year of our reign.

Subpœna issued by of , solicitor for the .

N.B.—Notice will be given to you of the day on which your attendance will be required.

Subpœna ad Testificandum and Duces tecum.

EDWARD THE SEVENTH, by the grace of God, &c.

To , greeting:

We command you to attend at the sittings of the Probate, Divorce and Admiralty Division of our High Court of Justice at the Royal Courts of Justice, Strand, in our county of Middlesex, on the day of , 19 , by half-past ten of the clock in the forenoon of the same day, and so from day to day whenever the said Division of our said Court is sitting, until the action or proceeding is heard, and also that you bring with you and produce at the time and place aforesaid , then and there to testify and show all and singular those things which you or either of you know, or the said deed or instrument doth import, of and concerning a certain action or proceeding now in the said Division of our said Court depending between , plaintiff, and , defendant, on the part of the , and on the aforesaid day, between the parties aforesaid to be heard. And this you or any of you shall by no means omit, under the penalty of each of you of one hundred pounds.

Witness, the Right Honourable , Lord High Chancellor of Great Britain, at our High Court of Justice, the day of , 19 , in the year of our reign.

Subpœna issued by , of , solicitor for the .

N.B.—Notice will be given to you of the day on which your attendance will be required.

PRÆCIPE.

Præcipe for Subpœna ad Testificandum.

In the High Court of Justice. Probate Division.

Subpœna for to testify between , plaintiff, and , defendant, on the part of the .

Dated day of , 190 .

Præcipe for Citation.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased. Citation (1) for against (2) in the matter of (3) of , in the county of , deceased.

The (4) day of , 19 .(5)

(1) Name of plaintiff.
(2) Name of defendant.
(3) Here set out what the citation requires in the terms of the citation.
(4) Præcipe dated.
(5) Name and address of parties issuing citation.

Præcipe. Setting down Cause for Trial.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

against

hereby enters this action for trial by a Judge of the Probate Division of this Court [*or*] of the issues of fact arising from the pleadings in this action by a Judge of the Probate Division of this Court and a jury.

Dated the day of , 190 .

Præcipe for Subpœna to bring in Script.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

Subpœna for against to bring into and leave in the Principal Registry of the Probate Division of the High Court of Justice, a certain original paper or script being or purporting to be testamentary, to wit .

Dated the day of , 19 .

[*Here insert name and address of solicitor.*]

SUMMONSES.

Registrar's Summons.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

Against .

Let the attend one of the Registrars at the Principal Probate Registry of the High Court of Justice, at Somerset House, Strand, in the county of Middlesex, on next, the day of , 19 , at of the clock, to show cause why .

Dated day of , 19 .

This summons issued by , solicitor for the .

Judge's Summons.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

Against .

Let the attend one of the Judges of this Division at his Chambers at the Royal Courts of Justice on next, the day of , 19 , at of the clock, to show cause why the .

Dated day , 19 .

This summons issued by , solicitor for the .

Summons for Directions (Probate).

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.) 19 , , No. .

In the estate of , deceased.

Between , Plaintiff.

against

Defendant.

Let all parties concerned attend one of the Registrars, at the Principal Probate Registry of the High Court of Justice, at Somerset House, Strand, in the County of Middlesex, on day, the day of , 19 , at o'clock in the noon, on the hearing of an application on the part of the to show cause why an order for directions should not be made in this action as follows:—

Affidavit of Scripts.—

Pleadings.—Endorsement on writ to stand for statement of claim. Statement of claim containing full particulars in days. Statement of defence containing full particulars in days. Reply (if necessary) in days.

Admissions.—

Discovery.—That after defence delivered the plaintiff and defendant do respectively within ten days after service of copy receipt for deposit in Court file an affidavit of documents.

Interrogatories.—For leave to interrogate the . Answers to be filed within ten days.

Inspection of Documents.—

Inspection of Real or Personal Property.—

Commissions.—

Examination of Witnesses.—

Place of Trial.—

Mode of Trial.—

Any other Interlocutory Matter or thing.—

Liberty to apply .

And that the costs of this application be costs in the cause.

Dated the day of , 19 .

This summons was taken out by , of , solicitor for .

To .

Summons to Discontinue Proceedings.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased.

against

Let the attend one of the Registrars at the Principal Probate Registry of the High Court of Justice, at Somerset House, Strand, in the County of Middlesex, on next, the day of , 190 , at of the clock, to show cause why the contentious proceedings in this arising from caveat No. , entered on the day of , 190 , and also from writ of summons issued on the day of , 190 , should not be discontinued and why , of , late of , the deceased herein should not be granted to , the in this if entitled thereto.

Dated day of , 190 .

Summons issued by , solicitor for the .

Summons for Discovery and Inspection of Documents.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the estate of , deceased, against .

Let the attend one of the Registrars at the Principal Probate Registry of the High Court of Justice, at Somerset House, Strand, in the county of Middlesex, on next, the day of , 19 , at of the clock, on the hearing of an application on the part of the above-named , that the above-named do within days after service of the order to be made hereon upon h , make and file a full and sufficient affidavit stating whether h h or ha had in h possession or power and (if any), what document relating to the matters in question in this , and accounting for the same. And that h do within days after the filing of such affidavit, produce to the said h solicitor or agent such of the said documents as by such affidavit shall appear to be in h possession, custody, or power, except such of the same (if any) as h may by h said affidavit object to produce. And that the said h solicitor or agent may be at liberty to inspect and peruse the documents so produced, and take copies thereof and abstracts and extracts therefrom as h shall be advised at h expense. And that the said may be at liberty to make such further application as to all or any of the documents mentioned in the said affidavit as h may be advised.

Dated this day of , 19 .

To .

Summons issued by , of , solicitor for .

Specially Indorsed Probate Writ of Summons.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.

(Probate.) 19 . No. .

Between , Plaintiff,

and

, Defendant.

EDWARD THE SEVENTH, by the grace of God, *&c.*

To , of .

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of .

And take notice that in default of your so doing the said may proceed therein, and judgment may be given in your absence.

Witness, , Lord High Chancellor of Great Britain, at the High Court of Justice in London, the day of , 19 , and in the year of our reign.

The Plaintiff claim .

This writ is issued against you as .

Probate Registry, Somerset House.

A sufficient affidavit in verification of the endorsement on this write to authorise the sealing thereof has been produced to me this day of , 19 .

Registrar.

This writ was issued by , of , solicitor for the plaintiff , by the plaintiff , in person, who reside at .

This writ was served by me , on the defendant , on , the day of , 19 .

(1)

Writs are sealed at the Central Office, Royal Courts of Justice, and a copy must forthwith be lodged at the Contentious Department, Principal Probate Registry.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance to be entered at the Central Office of the Royal Courts of Justice, London.

(1) Signature and address of server.

COMMISSION.

Form which is to be followed as nearly as the circumstances of the case will allow.

Commission or Requisition for Examination of Witnesses.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

EDWARD THE SEVENTH, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith.

To [*here set forth the name and proper description of the commissioner*], greeting:

Whereas a certain cause is now depending in the Probate, Divorce and Admiralty Division of our High Court of Justice between A. B., plaintiff, and C. D., defendant. And whereas by an order made in the said cause on the day of , 19 , on the application of the said A. B., it was ordered that a commission [*or* requisition] should issue under seal of our said Division for the examination of [*here insert name and address of one of the persons to be examined*] and others as witnesses to be produced on the part of the said A. B. (saving all just exceptions). Now know ye that we do by virtue of this commission [*or* requisition] to you directed, authorize [*or* request] you within thirty days after the receipt of this commission [*or* requisition] at a certain time and place to be by you appointed for that purpose with power of adjournment to such other time and place as to you shall seem convenient to cause the said witnesses to come before you, and to administer to the said witnesses respectively an oath truly to answer such questions as shall be put to them by you touching the matters set forth in the pleadings in the said cause (a true and authentic copy whereof sealed with the seal of our said Division is hereunto annexed), and such oath being administered, we do hereby authorize [*or* request] and empower you to take the examination of the said witnesses touching the matters set forth in the said pleadings, and to reduce the said examination or cause the same to be reduced into writing. And that for the purpose aforesaid you do assume to yourself some notary public or other lawful scribe as and for your actuary in that behalf if to you it should seem meet and convenient so to do. And the said examination being so taken and reduced into writing as aforesaid and subscribed by you, we do require [*or* request] you forthwith to transmit the said examination, closely sealed up, to our Principal Probate Registry at

Somerset House, Strand, in the county of Middlesex, together with these presents. And we do hereby give you full power and authority to do all such acts, matters and things as may be necessary, lawful and expedient for the due execution of this our commission [*or* requisition].

Dated at London, the day of , in the year of our Lord one thousand nine hundred and , and in the year of our reign.

(Signed) X. Y., Registrar.

Minute to found Jurisdiction of the County Court.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Probate.)

In the goods of , deceased.

On reading the affidavit of , sworn on the day of , 190 , it appears to the satisfaction of the undersigned Registrar of the Principal Probate Registry of this Court that , late of , in respect of whose estate application has been made at the District Probate Registry of this Court, at , for had at the time of death, which happened on or about the day of , 19 , a fixed place of abode in the district of , and that the personal estate of the said deceased which died possessed of or entitled to and for and in respect of which such granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and not beneficially, and without deducting anything on account of the debts due and owing from the said deceased, were at the time of death under the value of two hundred pounds, and that the said deceased at the time of death was not seised or entitled beneficially of or to any real estate of the value of three hundred pounds or upwards.

Dated the day of , 190 .

Registrar.

INVENTORY.

A true, full, and particular inventory of all and singular the personal estate and effects of A. B., late of , deceased, which have at any time since his death come to the hands, possession, or knowledge of C. D., the sole executor named in the last will and testament of the said A. B. [*or* administrator of the said personal estate and effects, *as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or* solemn affirmation] of the said C. D., follows, to wit:

First, this exhibitant saith, that the said deceased was at the time of his death possessed of ... ... [*The details of the deceased's effects must be here inserted in as many sheets of paper as may be necessary, and the value inserted opposite to each particular.*]	£	*s.*	*d.*

Lastly, this exhibitant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this exhibitant, save as is herein-before set forth.

(Signed) C. D.

On the day of 19 the said C. D. was duly sworn to [*or* solemnly, sincerely, and truly declared and affirmed, *according to the form of words prescribed by the statute applicable to the particular case,*] the truth of the above inventory, at

Before me,

PROBATE FEES.

Contentious Department.

	£	*s.*	*d.*
Filing—			
Affidavits, each	0	2	6
Bonds	0	2	6
Citations (inclusive fee put on præcipe: sealing, 5*s.*; affidavit, 2*s.* 6*d.*; draft, 2*s.* 6*d.*)	0	10	0
Depositions (including minute, 3*s.*)	0	5	6
Any other document (except scripts)	0	2	6
Costs (1*l.* 10*s.* deposit for each 100*l.* and proportionately on each part of 100*l.*)	0	2	6
Entering action for trial (including 1*l.* for decree)	3	0	0
Entering appeal (including 1*l.* for decree and 2*s.* 6*d.* for filing notice)	3	2	6
Garnishee (order nisi and absolute)	0	10	0
Judgment after trial at assizes	1	0	0
Motions—			
Case (fee for order)	0	10	0
Affidavits	0	2	6
Orders (other than final order)	0	5	0
Receiver, appointment of (pendente lite)	1	0	0
Receipt (for probate or letters of administration)	0	2	6
Requisition or commission	1	0	0
Search in minutes	0	2	6
in index	0	1	0
Scripts (up to five)	0	5	0
(any number exceeding five an additional)	0	5	0
Summonses—			
For directions (including 5*s.* for order)	0	15	0
subsequent directions (for order)	0	5	0
time (for memorandum)	0	3	0
discontinuance (including 10*s.* for order)	0	13	0
discontinuance after summons for directions	0	10	0
any other final order	0	10	0
Any other summons (including 5*s.* for order)	0	8	0
On appeal to judge (no fee)			
Subpœna to bring in will (inclusive fee put on præcipe: sealing, 5*s.*; order, 5*s.*; affidavit, 2*s.* 6*d.*)	0	12	6
Subpœna for three witnesses (each subpœna carries three witnesses)	0	5	0
Swearing (each person)	0	1	6
(marking exhibits)	0	1	0
Writs—			
Attachment	0	5	0
Elegit	0	5	0
Fi. fa.	0	5	0
Sequestration	0	5	0

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